

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

**PUBLIC HEARING TO CONSIDER THE PROPOSED AMENDMENTS TO THE
CONSUMER PRODUCTS REGULATION AND METHOD 310**

Public Hearing Date: May 25, 2018
Agenda Item No.: 18-4-2

I. GENERAL

- A.** The Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report), entitled "Public Hearing to Consider the Proposed Amendments to the Consumer Products Regulation and Method 310", released April 3, 2018, is incorporated by reference herein. The Staff Report contains a description of the rationale for the proposed amendments. On April 3, 2018, all references relied upon and identified in the staff report were made available to the public.

On May 25, 2018, the California Air Resources Board (the Board or CARB) conducted a public hearing to consider amendments to the California Consumer Products Regulation, title 17, California Code of Regulations (CCR), sections 94509, 94513, and 94515, and Method 310. This Final Statement of Reasons (FSOR) for Rulemaking summarizes the written and oral comments received during the rulemaking process and contains CARB's responses to those comments.

At the hearing, the Board approved Resolution 18-19, which initiated steps towards final adoption of the proposed amendments.

**B. MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND
SCHOOL DISTRICTS**

The Board has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, title 2 of the Government Code.

C. CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the Staff Report, in staff's comments and responses at the hearing, and in this FSOR, the Board determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken by the Board.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

A. REVISIONS TO THE INITIAL STATEMENT OF REASONS, CHAPTER III. SUMMARY OF THE SPECIFIC PURPOSE AND RATIONALE FOR EACH ADOPTION, AMENDMENT, OR REPEAL, B. PROPOSED AMENDMENTS TO METHOD 310

Summary of CARB Method 310, Section 2

Staff proposes updating select titles of incorporated by reference documents to improve the accuracy of their citation.

Rationale for CARB Method 310, Section 2

Updating these citations will fix errors in previously incorporated by reference documents and thus allow the regulated community to more clearly understand which documents are being cited.

Summary of CARB Method 310, Section 3.4, 3.6, 5.1, 5.4, and 5.5

Staff proposes to delete the term “Manufacturer” throughout CARB Method 310 in sections: 3.4.2, 3.4.3, 3.4.4, 3.6.2, 5.1, 5.4.1, 5.5.1, 5.5.2, 5.5.3, and 5.5.4.

Rationale for CARB Method 310, Section 3.4, 3.6, 5.1, 5.4, and 5.5

The term “Manufacturer” was deleted to make the language consistent with the Consumer Products Regulations (Regulations), which defines “Responsible Party” in Title 17, CCR, section 94508(a)(110). The “Responsible Party” is the entity legally liable for complying with the Regulations requirements, including providing information such as the product formulation. We believe removing “Manufacturer” clarifies the language.

Summary of CARB Method 310, Section 3.4 and 5.4

Staff proposes to delete the language in section 3.4 and 5.4 of CARB Method 310 because the language is no longer necessary.

Rationale for CARB Method 310, Section 3.4 and 5.4

CARB Method 310 sets forth the analytical procedures and processes used to determine compliance with the Consumer Products Regulation. Staff is proposing to delete the language in section 3.4, which requires CARB to retest samples in certain cases. CARB believes this is unnecessary because CARB has existing Quality Assurance/Quality Control procedures to ensure that test results are valid.

Summary of CARB Method 310, Section 7

Staff proposes to delete the term “constituent” in section 7 of CARB Method 310.

Rationale for CARB Method 310, Section 7

Constituent is a synonym for the word component. Deleting “constituent” removes redundancy.

B. NON-SUBSTANTIAL MODIFICATIONS

Staff identified the following additional non-substantive changes to the regulation:

Section 94506: For consistency with amendments being made to Method 310, staff has updated the last amended date for Method 310, corrected the citations to Method 310 with the numbering of amended sections, deleted the term “Manufacturer” (for reasons stated on page 2) and replaced “manufacturer” with the term “Responsible Party” where it had previously only mentioned “manufacturer” (subsection (b)). Staff also corrected a citation of the CCR in section (a)(2) to cite title 17, CCR, Division 3, Chapter 1, Subchapter 4 (Disclosure of Public Records).

Section 94515: For consistency with amendments being made to Method 310, staff has updated the last amended date for Method 310, corrected the citations to Method 310 with the numbering of amended sections, deleted the term “Manufacturer” (for reasons stated on page 2) and replaced “manufacturer” with the term “Responsible Party” where it had previously only mentioned “manufacturer” (in subsections (b)(1) and (d)(1)). Staff also corrected a citation of the CCR in section (a)(2) to cite title 17, CCR, Division 3, Chapter 1, Subchapter 4 (Disclosure of Public Records).

Method 310: Staff has corrected numbering in sections 2: Reference Methods, 3: Testing to Determine VOC, and 5: Testing to Determine ROC. Staff has renamed all instances of “ARB” to “CARB” to reflect agency name change from Air Resources Board to California Air Resources Board.

The above described modifications constitute non-substantial changes to the regulatory text because they more accurately reflect the numbering of a section and correct spelling and grammatical errors, but do not materially alter the requirements or conditions of the proposed rulemaking action.

III. DOCUMENTS INCORPORATED BY REFERENCE

The regulation and the incorporated test procedures adopted by the Executive Officer incorporate by reference the following documents:

Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products (last amended May 25, 2018);

The following documents are incorporated by reference in the proposed amendments to Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products (last amended May 25, 2018):

ASTM D6730-01(2016), Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary (with Precolumn) High-Resolution Gas Chromatography, (April 1, 2016);

ASTM D4057-12, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, (December 1, 2012);

ASTM D4177-16e1, Standard Practice for Automotive Sampling of Petroleum and Petroleum Products, (October 1, 2016);

ASTM D4626-95(2015), Standard Practice for Calculation of Gas Chromatographic Response Factors, (April 1, 2015); and

ASTM E203-96, Standard Test Method for Water Using Volumetric Karl Fisher Titration, (October 10, 2001).

These documents were incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish them in the California Code of Regulations. In addition, some of the documents are copyrighted, and cannot be reprinted or distributed without violating the licensing agreements. The documents are lengthy and highly technical test methods that would add unnecessary additional volume to the regulation. Distribution to all recipients of the California Code of Regulations is not needed because the interested audience for these documents is limited to the technical staff at a portion of reporting facilities, most of whom are already familiar with these methods and documents. Also, the incorporated documents were made available by CARB upon request during the rulemaking action and will continue to be available in the future. The documents are also available from college and public libraries, or may be purchased directly from the publishers.

IV. SUMMARY OF COMMENTS AND AGENCY RESPONSE

In response to the public hearing notice for May 25, 2018, written comments were received during the 45-day comment period, and written and oral comments were presented at the Board Hearing. Listed below are the organizations and individuals that provided comments during the 45-day comment period. *NOTE: Written comments and oral testimony were not edited by CARB staff to correct for grammar or punctuation.*

COMMENTS RECEIVED DURING THE 45 DAY COMMENT PERIOD	
Commenter	Affiliation
Gardner, Paul (4/27/2018)	The Blaster Corporation (Blaster)
Bastian, Bart (4/30/2018)	Spray Products Corporation (SPC)
Freeman, Michael (4/30/2018)	WD-40 Company (WD-40)
Johnson, Gregory (4/30/2018)	The National Aerosol Association (NAA)
Marcella, Mike (5/1/2018)	Maxima Racing Oils (MRO)
Krause, Henry (5/3/2018)	Finish Line Technologies, Inc. (FLT)
Auriemma, William (5/14/2018)	Diversified CPC International, Inc. (DCPC)
Cash, Rhett (5/14/2018)	American Coatings Association (ACA)
Harrington, Daniel (5/14/2018)	Eveready Products Corporation (Eveready)
Raymond, Doug (5/18/2018)	Raymond Regulatory Resources, LLC (3R)
Georges, Nicholas (5/24/2018)	Household and Commercial Products Association (HCPA)

ORAL COMMENTS PRESENTED AT THE BOARD HEARING	
Commenter	Affiliation
Price, Allen (5/25/2018)	RSC Chemical Solutions (RSC)
Freeman, Mike (5/25/2018)	WD-40 Company (WD-40)
Bernarducci, Ernest (5/25/2018)	WD-40 Company (WD-40)
Raymond, Doug (5/25/2018)	Raymond Regulatory Resources, LLC (3R)
Quinonez, Nicole (5/25/2018)	Household and Commercial Products Association (HCPA)

1. Comment: We support staff's proposal of a product weighted Maximum Incremental Reactivity (MIR) limit of 0.45 with a maximum VOC level of 25%. The use of the Concept of Reactivity in the reduction of ozone formation is sound science. (NAA, Blaster, FLT, SPC, DCPC, MRO, 3R)

Agency Response: Comment noted.

2. Comment: We support the extension of the effective date to 7/1/2019. (WD-40, Blaster, FLT, SPC, MRO, ACA)

Agency Response: Comment noted.

3. Comment: To be consistent with section 94513 (h)(i)(a) and add clarity, the definition of "Product formulation" in section 94509(r)(1)(F) definition should read: "Product formulation" means the weight of all ingredients above 0.1 percent by weight. (WD-40)

Agency Response: Product formulation includes all ingredients regardless of the amount present. However, staff believes the proposed regulatory language is clear on what needs to be reported. As stated in section 94513(h)(2)(A), only ingredients present at 0.1 percent by weight or higher need to be reported.

4. Comment: The definition of "Product-Weighted MIR (PWMIR)" in Section 94509 (r)(1)(H) should include the following for clarity with section 94509(r)(4): "Product-Weighted MIR (PWMIR)" means the sum of all weighted-MIR for all ingredients equal to or exceeding 0.1 percent by weight in a "Multi-purpose Lubricant product. The PWMIR is the total product reactivity expressed to hundredths of a gram of ozone formed per gram of product (g O₃/g product), excluding container and packaging. (WD-40)

Agency Response: Staff believes the proposed regulatory language is clear on what is included in the calculation of PWMIR. As specified in section 94509(r)(4), only ingredients present at 0.1 percent by weight or higher must be included in the calculation.

5. Comment: "Fragrance" in Section 94509 (r)(5)(E) should reference a 0.1% by weight cutoff, and read: For fragrance, in the formula equal to or exceeding 0.1% by weight, as defined in section 94508(a)(54), present in a "Multi-purpose Lubricant" product, the MIR value for terpinolene, as listed in section 94700, must be used to calculate

the PWMIR unless detailed fragrance ingredients information is available to determine the MIR value of the fragrance. (WD-40)

Agency Response: The referenced above section designates the specified reactivity value must be used for fragrance unless there is a value derived for the specific fragrance in question. Staff believes that sections 94509(r)(4) and 94513(h)(2)(A), respectively, clearly state that those provisions are applicable only to ingredients (including fragrance) present at 0.1 percent by weight or higher. Therefore, staff believes it is unnecessary to reiterate that language here.

6. Comment: There should be additional statements added to Section 94509(r), Assignment of Maximum Incremental Reactivity (MIR) Values, such as the following: A description of high carbon chain high boiling point and low vapor pressure compounds be assigned a MIR Value 0.0.

Or

Grouped LVP are assigned a MIR Value of 0.0 with definition: Grouped LVP is a compound that has a carbon number greater than 20 and a Boiling Point above 250° C. Examples are beeswax, cellulose, cornstarch, non-volatile silicones, oils, non-volatile polymers, sodium xylene sulfonate, styrene butadiene rubber, tallow, triclosan, urea, xanthum gum, paraffin wax, and mineral oil.

Or

The statement “Compounds that contain at least one atom of carbon but do not contribute to ozone formation in the troposphere are assigned an MIR value of 0.0.”

These statements in this section will guide the public to know how to assign MIR values for compounds that contain at least one carbon atom but do not contribute to ozone formation, such as oils or base oils that historically have not been counted as VOC's. This wording is consistent with the following wording in section 94509(r)(1)(I) “Reactive Organic Compound (ROC)” Means any compound containing at least one atom of carbon and that has the potential, once emitted, to contribute to ozone formation in the troposphere. Any of the above statements will add clarity to the regulation. (WD-40, 3R)

Agency Response: Staff disagrees. Per the definition of Reactive Organic Compound, as defined in section 94509(r)(1)(I), the compound, once emitted, must have the potential to form ozone. If a compound does not have the potential to form ozone, then it would not be reactive and an MIR value of zero (0.00) will be assigned.

7. Comment: We support the sunset of the annual reporting. (WD-40, 3R, Blaster, FLT, SPC, MRO, Eveready, ACA)

Agency Response: Comment noted.

8. Comment: For clarity, Section 94513(h)(2)(D) should add “greater or equal to 0.1 percent by weight” so that it reads: (D) For chemical mixtures not listed in sections

94700, 94701, or 94509(r)(5) each chemical compound in the mixture greater or equal to 0.1 percent by weight must be reported separately. (WD-40, 3R)

Agency Response: Staff believes that section 94513(h)(2)(A) clearly states that those provisions are applicable only to ingredients (including fragrance) present in an amount equal to or exceeding 0.1 percent by weight. Therefore, staff believes it is unnecessary to restate that language here.

9. Comment: For clarity, Section 94513(h)(2)(F) should add “in a formula greater or equal to 0.1 percent by weight” so that it reads: (F) If an MIR value other than terpinolene is used for fragrance in a formula greater or equal to 0.1 percent by weight, the Responsible Party must provide the fragrance ingredients. (WD-40, 3R)

Agency Response: Staff believes that section 94513(h)(2)(A) clearly states that those provisions are applicable only to ingredients (including fragrance) present at 0.1 percent by weight or higher. Therefore, staff believes it is unnecessary to reiterate that language here.

10. Comment: If a product claims to be used on Gears, Chain or Wires as a Gear, Chain or Wire lubricant and has claims for use for drilling, cutting or tapping metals as a Cutting or Tapping Oil, are these types of products considered Multi-purpose lubricants subject to the new Reactivity option? Or are these products categorized a Gear, Chain or Wire lubricant and a Cutting or Tapping Oil subject to the existing 25% VOC limit? (3R, Eveready)

Agency Response: Because both the Gear, Chain, or Wire Lubricant category and the Cutting and Tapping Oil category definitions contain the term “exclusively...” a product making the claims described by the commenter would be considered a Multi-purpose Lubricant (MPL) subject to the 10 percent by weight VOC limit. As such, these products would be eligible to comply via the alternate compliance option; meet a 25 percent by weight VOC limit and a reactivity limit of 0.45 grams of ozone per gram of product.

11. Comment: Can the calculation of the annual reporting be done by calculating the population density of the state using national sales numbers as done in Consumer Product surveys? (3R, Eveready)

Agency Response: The Responsible Party must report annual sales. When California specific annual sales are not available, we will accept annual national sales.

12. Comment: HCPA supports the proposed effective date of July 1, 2019, for both the 10 percent by weight VOC limit and the PWMIR limit of 0.45 grams ozone per gram product. HCPA believes that this proposed compliance date is necessary to provide formulators and manufacturers a reasonable amount of time to assess their multi-purpose lubricants under both compliance options and be able to produce effective and compliant products. (HCPA)

Agency Response: Comment noted.

13. Comment: HCPA would like to thank CARB for addressing our previous comments about the reporting requirements to provide the information required in subsection 94509(r)(2)(A) through (2)(C) by reducing the length of time a company must provide the information to CARB before the product can be available for sale after July 1, 2019 from 90 days to 30 days. HCPA recommends that CARB staff review the length of time a company must provide the information required in subsection 94509(r)(2)(A) through (2)(C) before July 1, 2019 and consider reducing the amount of time a company needs to provide the required information from 90 days to 30 days. (HCPA)

Agency Response: We believe that manufacturers will quickly decide which path they will use to comply, because some products will have to undergo reformulation. Therefore, we believe the 90 day requirement is reasonable given that we expect most products that manufacturers will select to comply via the alternate compliance option prior to the effective date are already in the market. Additionally, products that would come into existence during the 90 day time window could still be placed into the market since the 10 percent by weight VOC limit is not effective yet. Products would only have to comply with the current VOC limit of 25 percent by weight, which is also a requirement under the alternate compliance option. Therefore, staff believes the 90 day notification requirement will not hinder introduction of products into the market.

14. Comment: HCPA supports the proposed sunset date of April 1, 2023 for the annual reporting requirement. HCPA understands that CARB staff needs market data to assess VOC emissions for multi-purpose lubricants and the trends of both compliance options. HCPA believes that with this sunset date for the annual reporting requirements, CARB will be able to gather sufficient market information about the multi-purpose lubricant product category to accurately assess the effectiveness of both compliance options. (HCPA)

Agency Response: Comment noted.

15. Comment: HCPA would like to notify CARB that aerosol products are now becoming available in plastic containers as well as metal. As such, HCPA suggests that CARB develop procedures for the propellant collection of plastic aerosol containers as has been done for metal and glass aerosol containers within Appendix A of Method 310. (HCPA)

Agency Response: Staff appreciates HCPA's comment.

16. Comment: We feel that the industry is quite capable of meeting the 10 percent or lower VOC regulation, and we also feel that it's desirable due to the removal of the flammable and our toxic VOCs that are currently in these products. These can be replaced with less toxic, less flammable materials, not only helping the product meet CARB regulation goals, but also making the products less flammable, less hazardous, and potentially less toxic. You can pick chemicals, and solvents, and low vapor pressure solvents that do reduce the overall hazardous nature of these products. So basically, we feel that the industry can be pushed to do both an MIR and a 10 percent VOC limit with this proposal. (RSC)

Agency Response: Staff reviewed the formulations of the products meeting the 10 percent by weight VOC limit and products that would meet the proposed alternate compliance option requirements of a PWMIR below 0.45 grams of ozone per gram of product and a VOC content not exceeding 25 percent by weight. Staff's review indicates that these two groups of products are formulated using very similar ingredients. The main difference expected between a product that would meet the 10 percent by weight VOC limit and a product that would comply via the alternate compliance option is the relative amounts of these chemicals. Staff believes that the difference in composition between products that meet the 10 percent by weight VOC limit and those that would comply via the proposed option would not result in MPL products with significantly different hazard or flammability profiles. Therefore, staff concludes that there is no significant potential for an adverse environmental impact to the hazards and hazardous materials resource area.

17. Comment: Today, it is with great pleasure that WD-40 supports the CARB staff recommendation. We've worked with them diligently over many years to create products that are still effective, but now not only effective, but are also achieving the clear -- the clean air quality standards on time. And we're just creating a new way to achieve this. So is just giving everybody another way to get to the same goal. And so I would like to say thank you to the CARB leadership and staff for a job well done. It's been a pleasure working with you. We believe this is truly a win-win situation, and how often does that happen, huh? (WD-40)

Agency Response: Comment noted.

18. Comment: I'm also here to support the amendment as I mentioned, but more importantly to thank the CARB staff. Their diligence and their strength in protecting our environment and our air, but more importantly their scientific courage to explore every option available to the industry to meet CARB's goals. The concept of reactivity that you've introduced is a true science based strategy in dealing with the reduction of ozone emissions. The issue of reactivity has allowed the industry to obtain the required emission reductions, provide flexibility in how we maintain those reductions, and still allow a company like WD-40 to provide and maintain effective products for all its customers. The Board needs to know and recognize the amounts of hours, flights, presentations, data sharing, questions, phone calls, and ultimately understanding that your staff has put into this solution. I cannot be more impressed or thankful with their ability to listen to allow us to come to new solutions, to push us to come to new solutions. There were incredible and it was an honor to work with them. (WD-40)

Agency Response: Comment noted.

19. Comment: I'm here representing the following: The WD-40 Company from San Diego, California; the B'laster Corporation from Ohio; Finish Line from New York; Maxima Racing Products from San Diego, California; Shield Products from Chino, California. IKI from Wisconsin; Plaze Corporation from Missouri; Aeropres from Louisiana; Diversified CPC from Illinois; and the National Aerosol Association headquartered in Southern California. All of these organizations support the staff's proposal, using reactivity as an alternate option to the 10 percent VOC, limit for multi-purpose lubricants. Most of these organizations have submitted prior

comments. So I'm not going to go over those. The use of reactivity is truly a science-based concept. It has been proven by your aerosol coating reg that was put in several, several years ago. And the National Aerosol Association was the first organization to support that reg. And I was here when that was happening. And I had a lot to do with it. So I really applaud the staff for looking at the reactivity option. It is very well a science-based option. The proposed amendments maintain the required ozone emission reductions for the SIP and also provide the industry with the much needed flexibility. (3R)

Agency Response: Comment noted.

20. Comment: HCPA is the national trade association. We represent companies that manufacture and sell over \$180 billion annually of products used for cleaning, protecting, maintaining, and disinfecting homes, and commercial environments. During the past 30 years, our member companies have spent hundreds of millions of dollars to reformulate their products to comply with ARB's standards, and improve air quality in California while maintaining effective products that contributed positively to Californian's lives. We are proud to have contributed to the profound improvements that ARB has achieved in improving air quality for all Californians. The association represents companies that manufacture or market multi-purpose lubricants. The category of products contains a wide array of chemistries and technologies. And our member companies have invested significant time and resources trying to develop effective products that meet the 10 percent by weight VOC limit. However, there are cases within the category in which this limit was not technically feasible. We commend ARB staff concerted efforts to ensure all interested parties had an opportunity to participate in an open and transparent public effort to develop a challenging yet technologically feasible reactivity-based alternative compliance option. It provides flexibility for manufacturers to continue offering products with the performance that consumers expect, while achieving ozone air quality benefits that are equivalent to the 10 percent by weight VOC limit. The bottom line is the proposed amendment will ensure that the ozone air quality benefits claimed in the SIP are achieved. (HCPA)

Agency Response: Comment noted.

V. Peer Review

Health and Safety Code Section 57004 sets forth requirements for peer review of identified portions of rulemakings proposed by entities within the California Environmental Protection Agency, including CARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process.

CARB determined that this rulemaking does not contain scientific basis or a scientific portion subject to peer review, and thus no peer review as set forth in Health and Safety Code Section 57004 was or needed to be performed.

VI. Business Report

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the recordkeeping, reporting,

and disclosure requirements of the proposed regulatory action, which apply to businesses, to be necessary for the health, safety, and welfare of the people of the State of California.