V.

PROPOSED AMENDMENTS TO THE AEROSOL COATING PRODUCTS, ANTIPERSPIRANTS AND DEODORANTS, AND CONSUMER PRODUCTS REGULATIONS, AND TEST METHOD 310

In this Chapter, we provide a plain English discussion of the proposed amendments to the California Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Consumer Products (the “Consumer Products Regulation”); the California Regulation for Reducing Volatile Organic Compound Emissions from Antiperspirants and Deodorants (the "Antiperspirants and Deodorants Regulation"); Regulation for Reducing Volatile Organic Compound Emissions from Aerosol Coating Products (the "Aerosol Coating Products Regulation"); and amendments to Test Method 310, and explain the rationale for the amendments. In the discussion below, when we refer to the “Regulations,” this term applies to the Consumer Products Regulation and the Antiperspirants and Deodorants Regulation.

Where applicable, key terms or concepts involved in each amendment are described. The discussion in this Chapter is intended to satisfy the requirements of Government Code Section 11343.2, which requires that a noncontrolling “plain English” summary of the regulation be made available to the public. The Aerosol Coating Products, Antiperspirants and Deodorants, and Consumer Products Regulations, and the amendments to Test Method 310 are found in Appendix A.

Amendments are being proposed to six Sections in the Consumer Products Regulation, Section 94508 “Definitions;” Section 94509 “Standards for Consumer Products;” Section 94510 “Exemptions;” Section 94512 "Administrative Requirements;" Section 94513 “Reporting Requirements;” and Section 94515 "Test Methods." We are also proposing amendments to Section 94501 "Definitions" and Section 94506 “Test Methods,” in the Antiperspirants and Deodorants Regulation. We are also proposing to amend Section 94526, “Test Methods,” of the Aerosol Coating Products Regulation. These amendments are discussed below in some detail. No other amendments to the existing Consumer Products Regulation are being proposed and the existing regulatory provisions such as exemptions and test methods will apply to the proposed categories as they apply to the currently regulated product categories.

A few of the more significant existing regulatory provisions that will apply to the 2004 Amendment categories are described briefly. However, for a more detailed discussion of the existing regulatory requirements, the reader is directed to the Phase I and Phase II Technical Support Documents, and the Mid-term Measures Initial Statement of Reasons (ARB, 1990; ARB, 1991; ARB, 1997; ARB, 1999).

Proposed Amendments to the Aerosol Coating Products, the Antiperspirants and Deodorants, and the Consumer Products Regulations

A. DEFINITIONS (SECTION 94508 AND SECTION 94501)

Sections 94501 and 94508, "Definitions," provide all the terms used in the Regulations which are not self-explanatory. The proposed amendments to the Regulations include new or revised definitions to help clarify and enforce the Regulations. In Tables V-1 to V-3 below, we list new definitions proposed for addition pertaining to new product categories proposed for regulation, new definitions to clarify terminology referenced in the Consumer Products Regulation, existing definitions that are proposed for modification to clarify the intent of the definition and to make the definition more enforceable, and lastly we list new definitions that are necessary because they relate to the categories proposed for regulation.

The following list, in Table V-1 comprises proposed new definitions that are needed for newly regulated product categories in the Consumer Products Regulation. Because of the proposed definitional changes, Section 94508(a) would also be reorganized to reflect proper alphabetical order. For all but "Deodorant Body Spray" and "Energized Electrical Cleaners" staff is proposing new VOC limits. Please see Chapter VI, which contains a detailed discussion related to each individual proposed newly regulated category:

Table V-1
New Definitions Proposed for Addition

Anti-Static Product
Contact Adhesive - General Purpose
Contact Adhesives - Special Purpose
Deodorant Body Spray
Electrical Cleaner
Electronic Cleaner
Energized Electrical Cleaner
Fabric Refresher
Floor or Wall Covering Adhesive Remover
Footwear or Leather Care Product
Gasket or Thread Locking Adhesive Remover
General Purpose Adhesive Remover
Graffiti Remover
Hair Styling Product
Shaving Gel
Specialty Adhesive Remover
Toilet/Urinal Care Product
Wood Cleaner

Table V-2, contains the list of existing definitions that are proposed to be modified to improve clarity or because within the definition they relate or refer to newly regulated categories:

Table V-2
Existing Definitions Proposed for Modification

Adhesive Remover	General Purpose Degreaser
Aerosol Product	Hair Shine
Air Freshener	Hair Spray
Bathroom and Tile Cleaner	Hair Styling Gel
Bug and Tar Remover	LVP-VOC
California Sales	Paint Remover or Stripper
Contact Adhesives	Personal Fragrance Product
Dusting Aid	Product Form
Existing Product	Semi-solid
Facial Cleaner or Soap	Shaving Cream
Furniture Maintenance Product	Spot Remover

The third list, Table V-3 below, is proposed definitions needed that relate to the newly proposed categories.

Table V-3
New Definitions Proposed that Relate to New Product Categories

Floor Coating	Pressurized Gas Duster
Paint Thinner	

Although not shown in the Tables above, we are also proposing to modify the "Deodorant" definition in Section 94501 of the Antiperspirant and Deodorant Regulation.

The following narratives address proposed definitional additions or changes that require further explanation.

Aerosol Product

Staff proposes minor changes to the definition of "Aerosol Product". The proposed changes are a clarification and are intended to address the fact that alternative packaging systems such as bag-in–can or piston technologies that result in product delivery similar to conventional aerosols, are included under the aerosol form. Staff does not expect any party subject to the Consumer Products Regulation to be adversely affected by this change.

California Sales

California sales is a term used under the reporting requirements provision in the consumer products regulation to refer to the total pounds of a given product sold in California during a calendar year. In the definition, the obsolete term "registration" is used. Registration used to refer to the process of reporting sales and formulation data.

The term now used to refer to reporting of data is “required information.” Therefore, staff has proposed to replace the outdated term “registration” with “required information”, to make it consistent with references elsewhere in the Consumer Products Regulation. Staff did not receive any comments relating to this proposed modification and does not expect any party subject to the Consumer Products Regulation to be adversely affected by this change.

Deodorants and Deodorant Body Spray

“Deodorant Body Sprays” are currently categorized as personal fragrance products containing 20 percent or less fragrance. Deodorant Body Sprays are products that are designed to be applied all over the body to provide a scent. However, these products appear to also provide some deodorant protection.

Deodorant Body Sprays designed for women have been available for a number of years and have been marketed and sold as personal fragrance products. Newer to the market are Deodorant Body Sprays designed for men. In the case of the Deodorant Body Sprays for men, the distinction between underarm deodorants, as defined in Section 94501(d) (see the Regulation for Reducing Volatile Organic Compound Emissions from Antiperspirants and Deodorants, title 17, California Code of Regulations, Sections 94500-94506.5), and “Personal Fragrance Products,” has been blurred. Staff is concerned about the potential for products labeled as Deodorant Body Sprays to be used as underarm deodorants, leading to erosion of the emission reductions achieved from aerosol deodorants.

Therefore, at this time, staff is proposing to modify the definition of “Deodorant” in Section 94501(d), of the Antiperspirants and Deodorants Regulation and propose a new definition in Section 94508 for “Deodorant Body Spray.” The “Deodorant” definition would be modified to specify that a deodorant is any product that indicates on the label that it can be used under the arm to provide a scent or minimize odor. The proposed definition for “Deodorant Body Sprays” would clarify that these products are personal fragrance products, unless the product label indicates or depicts it can be used under the arm. Any Deodorant Body Spray label which indicates or depicts that it is suitable for use in the human axilla would be considered a “Deodorant” as defined in Section 94501(d). Because the proposed modifications to the Deodorant definition may require some products’ labels to be modified, staff is also proposing that the definition would not become effective until January 1, 2006.

Staff intends to survey the proposed category “Deodorant Body Spray” to obtain 2003 calendar year formulation and sales data later this year. Staff will use the survey data to determine the most appropriate regulatory strategy. Until such time as an appropriate regulatory strategy is determined, Deodorant Body Sprays will continue to be required to meet a 75 percent by weight VOC limit, equivalent to the limit for “Personal Fragrance Products” containing 20 percent or less by weight fragrance.

Energized Electrical Equipment

As part of this rulemaking, staff is proposing to prohibit the use of three chlorinated solvents-methylene chloride (MeCl), perchloroethylene (Perc), and trichloroethylene (TCE)-in seven additional consumer product categories, including "Electrical Cleaners." The actual staff proposal is further explained later in this Chapter under Section B.

"Electrical Cleaners" are products designed to clean or degrease electrical equipment such as electric motors, armatures, relays, electric panels, or generators. In some instances cleaning or degreasing must be performed while the equipment is operational, i.e., current is in use, or where there is residual current. This is a situation when use of chlorinated solvents may be needed to ensure that the equipment being cleaned does not short out, and that there is no shock, spark, or fire hazard. In these situations staff believes that continued use of chlorinated solvents may be needed.

As such, staff is proposing a new definition for "Energized Electrical Cleaner" to define cleaners that must be used when electrical current is in use, or where there is residual electrical potential. These products, as proposed, would not be subject to the prohibition on the use of Perc, MeCl, or TCE; and would be exempt from compliance with the proposed VOC limit for "Electrical Cleaners" of 45 percent by weight.

To qualify for the exemption, "Energized Electrical Cleaners" would have to include a statement on their product label that clearly states that the product is solely for use on electrical equipment energized with an active or residual power source. This proposal is further explained in Chapter VI.

Hair Care Products

In preparation for the 2001 Consumer and Commercial Products Survey staff performed extensive shelf surveys, internet searches, and analyses of industry publications related to hair care products. Staff found the general category of hair care products to be very confusing and fluid. Often, hair care products are found to make multiple function claims, have non-specific claims, or not provide any claims or instructions at all. Product names are often not intuitive or descriptive of their function or purpose. Existing products are being repackaged or renamed and new products are constantly being brought to the market. Through extensive analysis staff found that products could be generally separated by those that aid in styling, (are placed in the hair before styling), those that "finish," (are applied after styling to maintain the style for a period of time), and those that perform both styling and finishing functions. Because of these issues staff believes it is necessary to redefine and re-analyze the hair care product definitions and VOC limits. Through the proposed definition changes discussed below, staff has attempted to characterize and regulate as many hair care products as possible. See Chapter VI, Section h, for a complete discussion of the justification for new VOC limits affecting hair care products.

Hairspray

The current regulatory definition of Hairspray attempts to capture those products that employ resins to hold, or maintain a hair style. The 2001 survey revealed that there are hair spray products that do not employ a resin. In addition, there are many products that are labeled to be applied to the hair both before and after styling, i.e. used as a styling aid and a finisher. The proposed changes to the hairspray definition attempt to address these issues first by removing the term “resin.” This change would include finishing hairsprays in the definition that employ wax or other similar compounds that aid in providing hold to styled hair. In addition, changes are proposed that would make it clear that products that are designed and labeled to be used as both a styling aid and finishing product fall under the definition of hairspray. Further, proposed changes draw a clear distinction between hairspray and hair styling product. While the definition and VOC limit pertaining to Hair Mousse was not significantly affected, staff did thoroughly evaluate those products and similar products and considered them in other hair care sub-category proposals.

Staff received comment that the proposed changes to the hairspray definition would cause previously un-regulated products to now come under regulation. This would cause a situation that would not allow manufacturers adequate time to reformulate products. Further, commentors were concerned that ARB would not perform the proper feasibility analysis that was normally undertaken when setting new limits for categories. We agree that the proposed changes may pull products such as wax-based hairsprays that were previously unregulated into the Consumer Products Regulation, but we do not agree that this raises any legal issues. However, we are proposing that the definition change would not become effective until December 31, 2006, to allow companies whose products do not meet the 55 percent VOC limit time to reformulate. In addition, staff performed several product determinations for hair wax products. In those determinations, we alerted industry that we would likely consider including hair waxes in the definition of hairspray in the next rule amendment. We also had mentioned the intention of including hair waxes in the hair spray definition at several Consumer Product Workgroup Meetings. Further, we have identified several potential reformulation pathways that are based on formulations of aerosol products that comply with the proposed 55 percent VOC limit. However, if reformulation options do not prove to be feasible for wax based hair sprays, then staff believes that these products could simply change from wax based systems to resin based systems. While this in effect would eliminate wax based hair sprays, this situation would not constitute elimination of a product form, because products serving the basic function of a hair spray are still available. Hair spray waxes do not make unique claims or provide functions that resin based hairspray and/or Hair Styling Products do not. Finally, staff believes that many hair waxes may be already be subject to a 55 percent VOC limit under the definition of Hair Shine.

Hair Styling Product

The definition of Hair Styling Gel currently in the Consumer Products Regulation covers a subset of a wide variety of products that perform in a very similar fashion available in the market place. Many of these products are similarly designed, and labeled with instructions to be placed on towel dried hair prior to styling, then the user is instructed to style the hair. The term "gel" is problematic in that the Consumer Products Regulation originally intended to address a specific form that is semi-solid in nature. However, the term "gel" is used by hair care product manufacturers to describe products that may be solid, liquid or semi-solid, and may be packaged in a tube, pump or aerosol can. As stated earlier, the hair care products market is very fluid with products and product labels changing constantly. It is difficult to determine by the label what form a product is. Further, it is difficult to determine from the label or even by direct inspection whether a product is a "gel" or other form. There are dozens of terms used on labels to describe similar products including but not limited to hair balm; clay; cream; crème; curl straightener; detangler; gel; liquid; lotion; paste; pomade; putty; root lifter; serum; spray gel; stick; temporary hair straightener; volumizer; and wax.

Therefore, staff is proposing to modify the definition of Hair Styling Gel to include a broader range of products and include multiple forms. The category is proposed to be renamed "Hair Styling Product" and the VOC limits proposed would be the same for solid, semi-solid, and liquid reflecting the fact that it is often difficult to differentiate form and that there are very low VOC products making very similar claims and containing the same directions for each form.

Low Vapor Pressure – Volatile Organic Compound

Currently, compounds that meet the definition of LVP-VOC are exempt from the definition of VOC. This exemption allows these compounds, which evaporate slowly and thus are less likely to substantially participate in ozone formation, to be used to meet percent by weight VOC limits specified in the Consumer Products Regulation. At present, an LVP-VOC is defined as a compound or mixture having a vapor pressure less than 0.1 mm of Mercury, a boiling point greater than 216 degrees Celsius, or more than 12 carbon atoms.

At issue is whether a manufacturer has undertaken due diligence to determine that the vapor pressure is unknown. To address this, staff is proposing that the definition of LVP-VOC be modified to allow compounds or mixtures to qualify as LVP-VOCs under the more than 12 carbon atom provision only if the vapor pressure *and* boiling point are unknown, and the existence of more than 12 carbon atoms is verified by formulation data. These proposed changes attempt to provide industry and ARB staff more certainty in determining when a compound or mixture qualifies as an LVP-VOC.

Staff received a number of comments opposing initially proposed language. Consequently, staff re-drafted the proposed language and now has received general

support for the latest proposed modified regulatory language. Staff does not expect the proposed modification to the LVP-VOC definition to adversely affect any party subject to the Consumer Products Regulation.

Multi-purpose Solvent

In the 2001 Survey, staff requested information on “Multi-purpose Remover” and “Packaged Solvent.” These two survey categories were part of the “Multi-Purpose Solvent” category. Initially, the data revealed that a number of paint thinners, or products suitable to be used as paint thinners, were reported. These products were removed and will be considered when paint thinners are evaluated for Consumer Products Regulation in subsequent rulemakings.

Also included in the category of “Multi-Purpose Solvent,” are multi-function products that claim to be suitable for degreasing; laundry pre-wash; removing latex paint drips, spots, stains, adhesives, graffiti, bugs, tar, and more. Almost all of these uses are either currently covered under previously regulated categories, or by categories proposed for regulation in this rulemaking.

Clearly these multi-function products present a regulatory challenge and a potential conflict with implementing the “Most Restrictive Limit” clause contained in Section 94512(a). Staff is concerned about continuing to allow multi-function products that makes claims for uses that are regulated, maintaining a ‘level playing field’ for all stakeholders, and ensuring that emission reductions already claimed, or being claimed, occur. While we have these concerns, staff believes that further evaluation of these products is prudent. Therefore, we are committing to further investigate the need for these multi-function products, and pending the outcome of that investigation, to determine the best regulatory strategy, in light of the issues raised here.

Product Form (Gel and Semi-solid)

Staff has identified an area of confusion relating to the term “Gel” as it pertains to describing a specific product form. Due to the proliferation of new products using a wide variety of terms to describe products available on the market, gel no longer is used in a manner consistent with the original intent of the Consumer Products Regulation to describe a unique product form. Staff believes that “semi-solid” better describes the product form, as it is intended to be addressed by the Consumer Products Regulation. Staff believes semi-solid is a more appropriate term to address products that are neither solid nor liquid but may be somewhere in between. The term Gel is currently used by marketers to describe a wide variety of product forms which may truly be liquid, semi-solid, solid or even foams and pump sprays.

Therefore staff is proposing to modify the following definitions to address this issue: Facial Cleaner or Soap; Gel; Hair Shine; Product Form; and Semi-solid. In addition, in the Table of Standards, under “Air Fresheners” the limit of 3 percent VOC specified for solids/gels would now read solids/semi-solids. Outside of hair care

products, staff does not believe that these proposed changes would require a significant number of products that are currently unregulated to now be subject to a VOC limit. In terms of hair care products see further discussion under the heading of Hair Care Products below.

Staff received comments that using the above discussed logic, Shaving Gel would need to be changed to Shaving Semi-solid to make the Consumer Products Regulation consistent. Staff disagrees with this comment because Shaving Gel is a specific product category and does not describe a product form of a product category. Shaving Gel is a term used and recognized by industry to describe a specific product.

Further, some interested parties commented that many products that were not previously regulated may now fall in to the Consumer Products Regulation and be subject to VOC limits or other requirements. Commenters assert that pulling new products into the Consumer Products Regulation by changing an existing definition, instead of addressing these products under the Consumer Products Regulation by creating a new category does not constitute a proper technical, commercial and economic analysis to determine if the proposed changes are feasible. We do not agree with this analysis. Staff believes that there may be some hair care products affected by this change but is not aware of any specific product that would be newly regulated. Staff would welcome a list of any such products and will evaluate possible feasibility issues. Product manufacturers may have the mistaken belief that because their product is labeled as a cream, putty, etc., that they are not subject to the gel (semi-solid) form limit specified for a given category. It is not the name, but the physical characteristics of the product that determine the form. We believe that changing the form definition from gel to semi-solid clarifies this point and makes clear which products are subject to regulation. For hair care products, staff has provided a full analysis and justification of the VOC limits set for hair styling products, the proposed definition language including form distinction such as gel or semi-solid, in Chapter VI, Subsection h.

B. STANDARDS FOR CONSUMER PRODUCTS (SECTION 94509)

Table of Standards

The proposed regulatory action would amend the existing consumer products regulation by adding product category definitions and VOC limits for 14 new categories, and by adding more stringent VOC limits for three existing categories. Some of these categories are split into subcategories, or have future effective limits for lower limits, such that a total of 25 VOC limits are proposed. For example, the new “Anti-static Product” category is subcategorized into “aerosols” and “non-aerosols”. The new or modified VOC limits would become effective December 31, 2006, December 31, 2008, or December 31, 2009, as indicated in Table V-4 below. These changes would be reflected in the Table of Standards in Section 94509.

Table V-4
Proposed VOC Limit, Product Forms, and Effective Dates

Product Category	Product Form	Proposed VOC Limit (wt%)	Effective Date
Adhesive Removers:			
Floor or Wall Covering Adhesive Remover	All	5	12/31/2006
Gasket or Thread Locking Adhesive Removers	All	50	12/31/2006
General Purpose Adhesive Remover	All	20	12/31/2006
Specialty Adhesive Remover	All	70	12/31/2006
Anti-Static Product	Aerosol	80	12/31/2008
	Non-aerosol	11	12/31/2006
Contact Adhesive:			
Contact Adhesive - General Purpose	All	55	2/31/2006
Contact Adhesive - Special Purpose	All	80	12/31/2006
Electrical Cleaner	All	45	12/31/2006
Electronic Cleaner	All	75	12/31/2006
Fabric Refresher	Aerosol	15	12/31/2006
	Non-aerosol	6	12/31/2006
Footware or Leather Care Product	Aerosol	75	12/31/2006
	Solid	55	12/31/2006
	All Other Forms	15	12/31/2006
Graffiti Remover	Aerosol	50	12/31/2006
	Non-aerosol	30	12/31/2006
Hair Styling Product	Aerosol, Pump Spray	6	12/31/2006
	All Other Forms	2	12/31/2006
Shaving Gel	All	7 4	12/31/2006 12/31/2009
Toilet/Urinal Care Product	Aerosol	10	12/31/2006
	Non-aerosol	3	12/31/2006
Wood Cleaner	Aerosol	17	12/31/2006
	Non-aerosol	4	12/31/2006

Wasp and Hornet Insecticides

The VOC limit specified for Wasp and Hornet Insecticides currently appears at the end of the table of standards, separate from other insecticide standards. Staff is proposing to move the citation of the VOC limit under the general heading of insecticides, so that it would appear with the rest of the insecticide categories. Staff

believes that this change is necessary for clarification and ease of finding the limit. Staff did not receive any opposition to this change from interested parties and believes that this change would not adversely affect any party subject to the Consumer Products Regulation.

Shaving Gel

As shown in the Table V-4 above, in addition to the proposed 7 percent VOC limit for Shaving Gel, effective December 31, 2006, we are proposing a future effective VOC limit for Shaving Gel products. The proposed future limit is 4 percent by weight, effective December 31, 2009. Staff believes that this limit is feasible, if more time is given to achieve this challenging VOC limit. However, the proposed two tiered limit is designed to achieve what staff believes to be the maximum feasible reduction from Shaving Gel products at this time. Because of the challenge, however, should the Board adopt the staff's proposal, within the Resolution adopting the amendments, staff would commit to a formal technical and cost assessment of the technological feasibility of the 4 percent limit no later than January 1, 2009.

Other Subsections of Section 94509

The following changes are those that pertain to Subsections of section 94509 separate from the Table of Standards.

Dilutable Automotive Windshield Washer Fluids

Staff is proposing to modify Section 94509(b) to allow manufacturers of dilutable automotive windshield washer fluids to specify multiple dilution instructions on the label. The Consumer Products Regulation specifies different VOC limits in different areas of California for Automotive Windshield Washer Fluids: 35 percent VOC by weight for Type A areas, and one percent VOC for non-Type A areas. The Consumer Products Regulation currently specifies this bifurcation of the VOC limit recognizing that in Type A areas, (those mountainous areas subject to low winter temperatures), more VOC is needed to protect the washer fluid and associated equipment from freezing.

Further, the Consumer Products Regulation currently considers the dilution instructions found anywhere on the label that result in the minimum dilution, (those resulting in the highest VOC content), in determining the product's VOC content for the purpose of complying with the specified limits. Because of this, if a manufacturer chooses to market one product intended for both Type A areas and non-Type A areas, and includes dilution instructions specific to each area, the product would not comply with VOC limits specified for non-Type A areas.

Therefore, staff is attempting to correct this situation by allowing multiple dilution instructions to be considered for Automotive Windshield Washer Fluids. Because limits for different areas of California are specific to automotive windshield washer fluid, no other products will be offered a similar allowance. The proposed amendments to the

Consumer Products Regulation would require that products intended for both Type A areas and non-Type A areas specify the dilution instructions for each area. Further, for the purposes of determining compliance with the applicable VOC limit, the proposed amendments would consider the VOC content after the specified dilution has taken place for either Type A or non-Type A areas respectively.

Staff has received support from interested parties on this proposed change to the Consumer Products Regulation. Staff does not believe that these proposed modifications would adversely affect any party subject to the Consumer Products Regulation. Rather it is anticipated that these amendments would be beneficial to manufacturers of dilutable automotive windshield washer fluids.

Sell-through of Products (Notification of Sell Through), Section 94509(c)

A written notification provision is proposed for Section 94509(c), that would add a requirement that any person who sells or supplies regulated consumer products during the 3-year sell-through period, must notify the purchaser of the product in writing of the date on which the sell-through period for that product will end. However, this notification is required only if the product is sold or supplied to a distributor or retailer within the last six months of the sell-through period and does not comply with the lowest applicable VOC limit.

The written notification requirement is proposed because we have continued to observe older non-compliant products on the shelves long after the three-year sell-through period is over. Enforcement investigations have found cases where the products were sold to retailers close to the end of the sell-through period without the retailer being informed that they had a limited time to legally sell the product. This leaves the retailer burdened with non-complying products and since most retailers cannot determine if products comply, non-compliant products continue to be sold in California. In other cases, manufacturers have not been able to substantiate that they have notified their distributors and retailers that certain products should no longer be sold in California. While we encourage manufacturers to inform distributors and retailers throughout the sell-through period, this provision should ensure that buyers who are not aware of our regulation will have prior knowledge that specific products must not be sold in California after the expiration of the applicable sell-through dates. This provision should not place an undue administrative burden on most companies because the majority of products are sold well before the final six months of the sell-through period, and many companies who do sell products within the final six months already notify their purchasers about the end of the sell through period.

In addition, staff added a Subsection (c) to Section 94509(c)(1) to clarify that the sell through provision for solid Air Fresheners and Toilet/Urinal Care Products containing para-dichlorobenzene is not three years, rather it is one year per Subsection (o) of Section 94509.

Requirements for Aerosol Adhesives

Staff proposes a minor correction to Section 94509(i)(1) related to additional requirements for aerosol adhesives. This correction would address an inconsistency in the Consumer Products Regulation's language which does not allow complying aerosol adhesives to be used under certain circumstances. The Consumer Products Regulation allows any product with a VOC content above an applicable VOC limit, manufactured prior to the effective date of that limit, to be sold for up to three years after the effective date (Sell-through provision). The current language of Subsection 94509(i)(1) prohibits the use of any aerosol adhesive that exceeds an applicable VOC standard. It was not the intent to prohibit *use* of any product after sale if the product was legally sold prior to or during the sell-through period. The sell through period for aerosol adhesives expires on January 1, 2005.

The second sentence of this provision addresses exceptions to the use of aerosol adhesives that contain VOCs in excess of an applicable standard. Therefore staff proposes adding a citation to Section 94509(c) Sell-through of products, prior to the citation of Section 94510 in the second sentence of the Subsection to correct this error. Staff does not believe that this change will adversely impact any party affected by the Consumer Products Regulation. In addition, staff has not received any comment opposing this change.

Prohibition of Chlorinated Solvents for Specific Categories

To mitigate a potential adverse environmental impact staff is proposing a new subjection (j) within Section 94509 to prohibit the use of the Toxic Air Contaminants methylene chloride, perchloroethylene, and trichloroethylene in Adhesive Removers, Contact Adhesives, Electrical Cleaners, Electronic Cleaners, Footwear or Leather Care Product, General Purpose Degreasers, and Graffiti Removers. As documented in Chapter IX, Environmental Impacts, staff has determined that implementing the VOC limits for these categories could lead to increased use of these three chlorinated solvents. As discussed in Chapter IX, continued use, or increased use of methylene chloride, perchloroethylene, and trichloroethylene, could potentially result in increased cancer cases.

Staff finds that the prohibition is technologically and commercially feasible because in each category, alternative products are available that do not use methylene chloride, perchloroethylene, and/or trichloroethylene. VOC limits are also proposed that can be achieved without using the exempt VOC solvents perchloroethylene or methylene chloride (trichloroethylene is considered a VOC). This proposal is consistent with prior action of the ARB to prohibit the use of methylene chloride, perchloroethylene, and trichloroethylene in aerosol adhesives, certain automotive maintenance products, and aerosol coatings.

The prohibition on chlorinated solvents is being proposed as a mitigation measure under the California Environmental Quality Act (Public Resources Code

Section 2100 et seq.) An alternative basis for the prohibition, however, is the authority granted the ARB to control toxic air contaminants (TACs) under Health and Safety Code Section 39665 et seq. Chapter VII of this Initial Statement of Reasons contains a description of the California's TAC identification and control program. The "needs assessment" report for the prohibition on chlorinated solvents, as specified in Health and Safety Code Section 39665, can be found in Chapter IX of this Initial Statement of Reasons.

C. EXEMPTIONS (Section 94510)

Exemption for products containing at least 98 percent para-dichlorobenzene

We propose to modify Subsection (g) to remove the reference to air fresheners appearing under the exemption of products containing at least 98 percent para-dichlorobenzene. This change is necessary implement staff's proposal to prohibit the use of para-dichlorobenzene in air fresheners. Please see the discussion of the technical justification for this change in Chapter VI, Section H, and Chapter VII. The exemption for insecticides containing at least 98 percent para-dichlorobenzene will remain.

D. ADMINISTRATIVE REQUIREMENTS (SECTION 94512)

Most Restrictive Limit

The current most restrictive limit provision applies only to representations made on the principal display panel of the product. Staff proposes that for products manufactured on or after January 1, 2007, representations made anywhere on the label, packaging, and all affixed labels or stickers be used to determine the applicable VOC limit for that product. This proposed language is consistent with a similar provision in the Aerosol Coating Products Regulation.

At the time the most restrictive limit provision was modified in 1991 to only include the principal display panel, we believed that it would not result in circumvention of the regulation. However, in recent enforcement investigations, products have been found where representations on the principal display panel were inconsistent with representations on the rest of the label or packaging. We have investigated cases where labels have appeared to have been changed to avoid reformulation to meet VOC limits. Principal display panels have made claims that the products are best described under an unregulated product category, but other claims and usage instructions on the container represent that the product is suitable for use as a regulated product. In order to level the playing field for products that comply with the VOC limits, we believe that all of the characterizations made by the company on the container and packaging should be used to determine the VOC limit, not just the principal display panel. This provision does not prevent multi-function products from being marketed, but only requires that they meet the lowest applicable VOC content based on the claims the manufacturer chooses to make on the label. These changes are being made to ensure that the

integrity of this regulation is maintained and that quantified emission reductions occur. The effective date of this change is proposed to be January 1, 2007, so that manufacturers have ample lead time to review their current labels and take appropriate action to insure that their products comply with the applicable standard.

Product Dating

Under the current language of the Consumer Products Regulation, products are required to clearly display the date of manufacture or a code indicating the date on all containers. We propose to make several changes to the provisions relating to these date codes in Section 94512(b) and 94512(c) that would become effective for products made after January 1, 2006.

In Section 94512(b), we are proposing to require that companies use either the date of manufacture, a specified code, or annually provide an explanation of the code designating the date of manufacture. In addition, an updated explanation would need to be provided any time a code-date is changed. A provision will also be added that the date or code-date must be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. This language is consistent with the Administrative Requirements in Section 94524(b) of the Aerosol Coating Products Regulation. Additional changes will be made to Subsection (b)(3) for clarity and to Subsection (b)(5) to renumber the section to make it consistent with the above changes.

Additional provisions are proposed for Section 94512(c), “Additional Product Dating Requirements”. Staff has proposed that manufacturers update their date code explanations on an annual basis starting in January 2006 unless they use the specified code. Any time a company changes their date code, it will be required to file a revised explanation prior to the product being sold in California with the revised code. Subsection (c)(3) will be added for clarity and consistency with the other consumer products regulations.

In addition, Subsection (c)(4) will be added to specify that codes indicating the date of manufacture are public information and may not be claimed as confidential. This change is consistent with a decision reached in a lawsuit filed against the ARB on October 11, 2002: *Pro’s Choice Beauty Care, Inc. v. California Air Resources Board* (Sacramento County Superior Court, Case No. 02CS01580). In this case, a consumer products distributor requested the ARB to disclose the date-code explanations filed with the ARB by a number of consumer products manufacturers. Some of these manufacturers did not claim any confidentiality protection for this information, but other manufacturers requested that their date code explanations be protected as confidential trade secrets. The ARB initially agreed with the manufacturers claiming confidentiality protection and refused to disclose the information. Pro’s Choice then sued the ARB under the California Public Records Act, asserting that the explanations were not entitled to confidential treatment.

The Court agreed with Pro's Choice. In an October 14, 2003 decision, Judge Lloyd Connelly held that date code explanations are not trade secrets and are not entitled to confidentiality protection under the California Public Records Act. The Court ordered the ARB to disclose the requested explanations to Pro's Choice, and the ARB did so. After due consideration of the Court's reasoning and the information learned during the briefing process for the lawsuit, staff believes that this case was correctly decided. Staff is therefore proposing to amend the consumer products regulation to provide that date-code explanations are public information, thereby providing notice to manufacturers that this information will be provided in the future to anyone who requests it.

Due to company mergers, brand ownership changes, change in fillers or manufacturers, code-dates become obsolete and the explanations filed with the Board are not updated. Often, records are not passed on to new companies or manufacturers, therefore making it nearly impossible to determine dates of manufacture. Some contract fillers use their own codes that do not match the explanations of the codes provided by the responsible party. Some manufactures make minor changes to codes that make them undecipherable. Maintaining accurate date code explanations are time intensive for manufacturers and ARB enforcement staff. In addition, distributors and retailers cannot identify what product to pull at the end of sell-through periods or during recalls. Initial proposals were considered to eliminate date codes or to allow a limited number of date codes that could be deciphered without an explanation. However, manufacturers expressed serious concerns about consumer confusion over "open" date codes and identified that the cost to change over to a limited number of codes would be significant.

Code dates that are not easily identified or observable are an ineffective enforcement tool in the field and result in unnecessary sampling and laboratory analysis, especially for products that are sold during the sell-through period. The changes made to Subsection 94512(b) will facilitate enforcement efforts while providing options to industry to ensure that the date of manufacture can be determined to prevent non-compliant products from being sold in California. However, it must be understood that companies that do not comply with the date code requirements will be subject to enforcement action.

<u>Additional Labeling Requirements for Adhesive Removers, Aerosol Adhesives, Contact Adhesives, Electrical Cleaners, and Electronic Cleaners</u>

Staff is proposing modifications to Section 94512(d) that would require certain product categories to place additional information on their labels to identify the appropriate product category and VOC limit for the category. Under the staff's proposal, Adhesive Removers, Contact Adhesives, and Electronic and Electrical Cleaners would be required to include the applicable product category, as defined in Section 94508, and the VOC limit for that category somewhere on the product's container. An abbreviation of the product category would also be acceptable to identify the product category,

however, the explanation of the abbreviation would be filed with the Executive Officer. Currently, these labeling requirements only apply to aerosol adhesives.

These labeling requirements are being proposed for Adhesive Removers, Contact Adhesives, and Electronic and Electrical Cleaners because it is not always evident from the product label what the appropriate subcategory would be. The proposal is also designed to aid in enforcement of the Consumer Products Regulation.

E. REPORTING REQUIREMENTS (SECTION 94513)

Reporting Requirements, Subsection (a)

Several revisions are proposed that relate to reporting requirements. As was discussed earlier in this Chapter, the definition of California Sales was modified to remove the obsolete term “registration’ and replace it with “required information.” Subsections (a) (8) and (b) of Section 94513 were also modified in this manner. These proposed modifications address the fact that formulation and sales data is no longer obtained through a “registration” process, rather is obtained through the survey process. Per the regulation, the survey (request for information) is the vehicle whereby data requested by the Executive Officer necessary to set limits in the regulation is obtained. A similar request for data had been previously referred to as “registration”, but no longer applies in this context.

Other revisions to Section 94513 are proposed to address the fact that during the 2001 survey, there was confusion as to who is required to submit requested information. Several companies refused to submit required information on behalf, or at the request of “responsible parties”. As an example, in some cases companies holding ingredient information (formulators) did not wish to share ingredient information with the responsible party, and they were not willing to provide ARB staff with this information. Even though it is stated specifically in state law (Sections 91100 and 94513, Title 17, of the California Code of Regulations) that ARB can require any holder of necessary information to determine emissions to submit the information upon request, it is not expressly stated within the Consumer Products Regulation. In these cases where formulators refused to supply formulation data, several responsible parties contended that if the regulation had specifically required that the formulator submit the information, it would have made it clear, and the formulator may have felt obligated to report the needed information.

The reporting requirements provision is proposed to be modified to clarify that any company or other person that holds information that is needed to complete a survey is required to submit the information when requested to do so by ARB. While these requirements to provide information upon request can be found elsewhere in state law, staff believes the changes are necessary for clarification, and eliminate the need to refer to requirements found elsewhere in state law.

We believe the proposed modifications discussed above address the issues of concern. Further we have determined that the proposed modified language does not impose any new requirements or costs on any individual or business, rather the changes simply clarify what is already required by state law. While it is not specifically addressed in the Consumer Products Regulation, Section 91100, Title 17, of the California Code of Regulations authorizes the ARB Executive Officer to require the submission of information needed by the Board to estimate atmospheric emissions and to carry out its other statutory duties. (See also Health and Safety Code Sections 39600, 39601, and 41511)

Staff has received comment from interested parties which state that the initially proposed language changes would result in sweeping new authority to ARB to require a wide variety of parties to report. Staff disagrees with this comment, but has modified the proposed language to clarify that parties other than the responsible party may only be required to report upon ARB request if the responsible party does not report or have or did not provide the specific information. Either way, adding the proposed language to the Consumer Products regulation simply repeats what is already required under State law, as discussed above.

Special Reporting Requirements for Consumer Products that Contain Perchloroethylene or Methylene Chloride, Subsection (e)

Currently, consumer products that contain methylene chloride or perchloroethylene are required to annually report the amount of these TACs used. These requirements have applied to categories subject to Section 94509.

We are proposing to also require that "Energized Electrical Cleaners," must report annually on the amount of methylene chloride or perchloroethylene used. This distinction is being made because we are proposing an exemption for use of methylene chloride and perchloroethylene (also trichloroethylene) in Energized Electrical Cleaners, such that these cleaners are not subject to the limits in Section 94509. While we believe the exemption for these products, that must be used while equipment is running, is necessary, we also believe it is prudent to track the use of these chlorinated TACs in these products.

F. AMENDMENT TO TEST METHOD 310, AND TEST METHODS SECTIONS 94506, 94515, AND 94526

We are proposing several changes to Test Method 310, one change to the Test Methods sections of the Consumer Products Regulation, the Antiperspirants and Deodorants Regulation, and the Aerosol Coating Products Regulation.

First of all, within Method 310, revisions to Appendix A of Test Method 310 would delete language that is no longer necessary from a previous version of Test Method 310. Additional proposed revisions to Appendix A include adding language, which will update procedures used to conduct Test Method 310 analyses.

Staff also proposes minor changes to Sections 2, 3, 4, 5 and Appendix B of Test Method 310 to reflect the re-certification of American Society of Testing and Measurement methods previously incorporated by reference.

In addition, staff proposes adding language to Section 4 of Test Method 310, which will clarify the calculation used in determining the percent VOC of Consumer Product Samples containing LVP-VOC compounds and/or mixtures.

We also propose updating Figures 1, 2 & 3 of Test Method 310. These updates will reflect the most recent specifications for the Metal Aerosol Container Propellant Collection System, Metal Aerosol Container Sample Venting Platform and Glass Aerosol Container Propellant Collection System. Staff also proposes adding Figure 4, which will include specifications for the Glass Aerosol Container Sample Venting Platform.

Within the Test Methods sections of the Consumer Products Regulation, the Antiperspirants and Deodorants Regulation, and the Aerosol Coating Products Regulation, we are proposing to update the date on which Test Method 310 was last amended. Because Test Method 310 is proposed for amendment in this rulemaking, within the "Test Method" sections a placeholder for the new effective date for Test Method 310 is provided. Additionally, within the Aerosol Coating Products Regulation, staff is proposing to update the Acid Content method used to determine Acid Content in rust converters. This would be reflected, by a new date in Section 94526(f).

REFERENCES

Air Resources Board, Technical Support Document. Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulation. June 6, 1997. *("Mid-term Measures I").* (ARB, 1997)

Air Resources Board, Technical Support Document. Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulation. September 10, 1999. *("Mid-term Measures II")*. (ARB, 1999)

Air Resources Board, Technical Support Document. Proposed Amendments to the Statewide Regulation to Reduce Volatile Organic Compound Emissions from Consumer Products - Phase II. October, 1991. (ARB, 1991)

Air Resources Board, Technical Support Document. Proposed Regulation to Reduce Volatile Organic Compound Emissions from Consumer Products. August, 1990. (ARB, 1990)

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