CSPA
Representing Household & Institutional Products
Aerosol - Air Care - Cleaners - Polishes
Automotive Care - Antimicrobial - Pest Management

November 16, 2010 *via* e-mail

Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Attn: Ms. Lori Andreoni
Manager, Board Administration and Regulations Coordination Unit
http://www.arb.ca.gov/lispub/comm/bclist.php

Subject: Comments on Proposed Amendments to the California Consumer Products Regulation; Board Agenda Item # 10-10-7

Dear Board Members:

The Consumer Specialty Products Association (CSPA) appreciates the opportunity to provide comments to the California Air Resources Board (ARB) on the proposed amendments to the state's comprehensive Consumer Products Regulation.[1] The proposed amendments will add and/or modify product category definitions and establish 15 new or lower VOC limits for broad categories of consumer products. The proposed new limits on volatile organic compounds (VOCs) will result in additional emission reductions of approximately 6.9 tons per day once fully effective. CSPA member companies manufacture or market all of the products included in the proposed 2010 Amendments. In most cases, CSPA member companies manufacture the leading product brands on the market.

CSPA submitted two sets of initial comments in a letter dated May 28, 2010, and a letter dated August 16, 2010. CSPA's positions stated in these earlier documents are hereby incorporated by express reference in the current comments that we are submitting today.

CSPA participated as an active member of the ARB's Consumer Products Regulation Workgroup (CPRWG). We commend ARB staff's efforts to ensure that all interested parties had an opportunity to participate in this open and transparent public effort to develop the proposed amendments that are presented to the Board for your consideration. Throughout the course of the current rulemaking process, CSPA worked cooperatively with ARB staff, environmental groups, air districts and various other stakeholders to identify potential opportunities for reductions in the VOC content of consumer products in the hope that these challenging new regulatory limits will prove to be technologically and commercially feasible.

[1] The text of the proposed amendments to the California Consumer Products Regulation is posted on ARB's website at: http://www.arb.ca.gov/regact/2010/cp2010/cpappa.pdf. The ARB "Staff Report: Initial Statement of Reasons (ISOR)," notice of the public hearing and other relevant documents are posted at: http://www.arb.ca.gov/regact/2010/cp2010/cp2010.htm.

CSPA member companies take seriously the environmental health and safety benefits of our products, and continuously seek to improve them. Therefore, CSPA member companies commit to expend the time and money to develop the new technologies necessary to reformulate their products to meet the aggressive and technology-forcing VOC limits such as those that will be established by this proposed regulation.

CSPA's commitment to meet this new challenge is consistent with our member companies' long-standing efforts to work constructively and cooperatively with ARB staff, environmental groups and other stakeholders. During the past 21 years, CSPA member companies spent hundreds of millions of dollars to lower VOC content in consumer products to help improve air quality in California while maintaining our industry's ability to supply effective products that consumers can rely upon to contribute positively to their health, safety, and quality of life.

STATEMENT OF INTEREST

CSPA is national trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of consumer and commercial products that help household and institutional customers create cleaner and healthier environments. CSPA member companies' products include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; and a host of other products used every day. These products are formulated and packaged in many forms and are generally marketed nationally. Through its product stewardship program Product Care® and scientific endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products.

COMMENTS

A. Comments on Proposals for Specific Product Categories

1. General Purpose Cleaners (non-aerosol)

The proposed new VOC limit, if adopted by the Board, will constitute the third time that ARB has regulated this form of the General Purpose Cleaner product category. CSPA continues to be extremely concerned about the proposed 0.5% VOC limit that would be applied to more than 1,500 products in the category reported in the 2006 Survey. Based upon extensive technical evidence that we have shared with ARB staff, CSPA continues to believe that the very aggressive proposal of 0.5% VOC limit for all products in this broad category pushes almost to the breaking-point the envelope of technological and commercial feasibility. This limit is very difficult for spray-and-wipe surface cleaners and wipes, non-aerosol product forms in this category that do not utilize large quantities of (often heated) water for cleaning, and must rely on other mechanisms to achieve effective soil removal.

Although our member companies continue to have serious concerns, CSPA is not opposing a 0.5% VOC limit for the vast majority of general purpose cleaners.

However, CSPA continues to urge ARB to provide a higher VOC limit for two product subcategories – General-purpose Cleaners in wipe form and Special-purpose Floor Cleaners.

a. CSPA urges ARB to consider adopting a 2% VOC limit for General-purpose Cleaners that are sold in wipe form.

A consumer use study conducted by one of CSPA's member companies found that twice as much liquid is used when consumers use a trigger form of product to clean a given surface area than is used when cleaning the same surface area with a wipe product. Taking into account the market share of trigger and wipe cleaning products, the resulting consumers use is approximately four times as many products in trigger form than wipe forms to clean a given surface area.[2] Assuming a 0.5% VOC limit for triggers and a 2% VOC limit for wipes, both trigger and wipe cleaning products yield an equivalent contribution to VOC emissions. Therefore, providing a higher (yet reduced limit from 4%) VOC limit for general purpose cleaners in wipe form would not result in a lower net VOC reduction in this category. CSPA requests that ARB consider this issue as part of a 15-day notice subsequent to adoption of the regulation.

b. CSPA urges ARB to create a narrowly-defined product subcategory for Special-Purpose Floor Cleaners.

CSPA urges that a new VOC limit for non-aerosol Special-Purpose Floor Cleaners (SPFCs) be established that is separate from the category of General Purpose Cleaners. We are willing to accept the 0.5% VOC limit for the vast majority of the products currently defined as GPCs if a new specialty cleaner category is created for Special-Purpose Floor Cleaner with a 3% VOC limit. CSPA's proposal is aimed at achieving maximum reductions while maintaining the safety and efficacy of these cleaning products, many of which are antimicrobial products.

This change is needed to assure that these types of spray-and-wipe products can be formulated without compromising walkway safety. This is especially important due to the fact that older consumers are finding that this type of cleaning system is far easier to accomplish for consumers without the physical abilities necessary for standard mop-and-bucket floor cleaners.

This new subcategory would be listed in the Section 94509 Table of Standards as follows:

Product Category	VOC Standard	Effective Date
Special-Purpose Floor Cleaner	3%	Dec. 31, 2012

The following modified definitions also would be needed in Section 94508:

"General Purpose Cleaner" means a general purpose cleaning product labeled to clean for use on a variety of hard surfaces, including small appliances. "General Purpose Cleaner" includes, but is not limited to, products designed or labeled for general floor cleaning, kitchen, countertop, or sink cleaning, and cleaners designed or labeled to be used on a variety of hard surfaces such as stovetops, cooktops, or microwaves. "General Purpose Cleaner" does not include "Special-Purpose Floor Cleaner."

[2] Calculation based on the market share of trigger cleaning products as being approximately twice that of wipes – 2 year *US Household Penetration (w/e 8/7/10) Neilson*.

> "Special-Purpose Floor Cleaner" means a cleaning product labeled exclusively for use in being applied to hard-surface flooring and wiped off without transfer of soil to a liquid reservoir. "Special-Purpose Floor Cleaner" does not include "Floor Maintenance Product," "Floor Polish or Wax" "Floor Wax Stripper," "Spray Buff Product," or "Wood Cleaner."

The technical and scientific reasons for higher VOCs in this category have been outlined in detail by a CSPA member company that will be submitting comments separately. We therefore urge ARB to address this issue further in a 15-day notice subsequent to adoption of this regulation.

2. General Purpose Degreaser (non-aerosol)

This category of products must be formulated to remove a broad spectrum of soils and substrates. Consequently, it will be very difficult for manufacturers to develop new product formulations that will comply with ARB's proposal to establish a 0.5% VOC limit. The difficult research and development task is further compounded by the great number and diversity of products included in this category (*e.g.*, ready-to-use pump sprays, wipes, liquids with dilutions, liquids without dilutions).

Although the 0.5% VOC limit poses significant challenges, CSPA member companies are not opposing the new VOC limit and commit to conduct active research and development efforts necessary to comply with this very aggressive VOC content of the products while maintaining the requisite level of product efficacy.

3. Glass Cleaner (Non-Aerosol)

This broad category of products serves many distinct and separate functions for a wide variety of household, institutional, commercial and industrial users. The ARB's proposed 3% VOC limit poses a substantial challenge for product manufacturers. This revised proposed limit constitutes a 25% reduction in the currently applicable regulatory limit of 4%, which had already proven difficult to reach for products aimed at removing difficult soils and heavy soil buildup without streaking or haze.

Product manufacturers will face a particularly difficult challenge to reformulate glass cleaners used in automobiles since these products must remove: (1) grime caused by the off-gassing from the interior of motor vehicles, and (2) insect residue and other grime that may be difficult to remove from the exterior windshield. Impaired visibility poses a substantial safety risk to drivers; this problem is exacerbated by the glare of morning and evening sunlight.

Notwithstanding this significant additional reduction in the VOC content for this product category, CSPA member companies commit to expend the amount of money to conduct the extensive research, development and engineering efforts necessary to ensure that the reformulated product: (1) achieve efficient cleaning, (2) minimize streaking, and (3) minimize residual compounds that remain on the glass that attract grime that causes increased hazing and more frequent need for cleaning.

4. Oven or Grill Cleaners (aerosol and non-aerosol)

ARB's proposed VOC limits for the Oven or Grill Cleaner product categories are reasonable and necessary. The proposed revisions to the VOC limits, effective date, and definitions for this product category are needed to assure that products used to remove soils on high temperature surfaces are safe and effective for consumers. Thus, CSPA supports the proposed changes for this product category.

5. Spot Remover – Dry Clean Only Products

CSPA member companies do not oppose ARB's proposal to include spot remover products used on dry clean only fabrics into the currently regulated "Spot Remover" category. In addition, CSPA does not oppose the ARB's proposed action to extend the existing prohibition on the use of perchloroethylene, methylene chloride and trichloroethylene for the Spot Remover category to newly added products (effective Dec. 31, 2012).

6. Silicone-based Multi-purpose Lubricants

CSPA member companies do not oppose ARB's proposal to ban the use of perchloroethylene, methylene chloride and trichloroethylene in this product category.

7. Special-purpose Lubricants (Aerosol and Non-aerosol)

CSPA continues to strongly believe that the 277 non-aerosol products and the 201 aerosol products that would be included in the proposed "Special-purpose Lubricants" category constitute too broad and diverse a range of products for a single VOC limit. Specifically, ARB's proposed definition would include dozens of different types of products — including lithium greases, moly greases, Teflon-based, cutting oils, anti-seize, chain and cable, gear, gun oil, etc. All of these products have different uses for different consumers and different VOC requirements; they do not fit into a single "one size fits all" category with one regulatory limit.

In addition, the 2012 effective date proposed does not provide adequate time for reformulation of hundreds of products. We therefore are urging that any new VOC limits in this area have effective dates of December 31, 2013, to be consistent with the previously adopted new VOC limit for Multi-Purpose Lubricants.

a. CSPA urges that ARB instead create four specifically defined lubricant categories and provide feasible VOC limits and effective dates.

After reviewing ARB's data summary for this product category, CSPA members would not oppose VOC limits and effective dates for the following narrowly-defined subcategories:

Category	**Form**	**VOC Limit (Effective Date)**
Anti-Seize Lubricant	Aerosol Non-Aerosol	40% (Dec. 31, 2013) 3% (Dec. 31, 2013)
Cutting and Tapping Oil	Aerosol Non-Aerosol	25% (Dec. 31, 2013) 3% (Dec. 31, 2013)

Category	Form	VOC Limit (Effective Date)
Gear, Chain and Wire Lubricant	Aerosol Non-Aerosol	25% (Dec. 31, 2013) 3% (Dec. 31, 2013)
Rust Preventive or Rust Control Lubricant	Aerosol Non-Aerosol	25% (Dec. 31, 2013) 3% (Dec. 31, 2013)

These new categories would be defined in Section 94508 as follows:

> "Anti-Seize Lubricant" means any lubricant specifically designed or labeled for anti-seizing applications that include prevention of parts seizure and easy of assembly and disassembly applications. "Anti-Seize Lubricant" may include food grade lubricants. "Anti-Seize Lubricant" does not include "Cutting and Tapping Oil," "Gear, Chain and Wire Lubricant," "Multi-purpose Lubricant," "Multi-purpose Dry Lubricant," "Penetrant," or "Silicone-based Multi-Purpose Lubricant."
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> "Cutting and Tapping Oil" means any lubricant specifically designed or labeled for use in metalworking operations that include drilling, cutting and tapping metals. "Cutting and Tapping Oil" may include food grade lubricants. "Cutting and Tapping Oil" does not include "Anti-Seize Lubricant," "Gear, Chain and Wire Lubricant," "Multi-purpose Lubricant," "Multi-purpose Dry Lubricant," "Penetrant," or "Silicone-based Multi-Purpose Lubricant."
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> "Gear, Chain and Wire Lubricant" means any lubricant specifically designed or labeled for use on gears, chains and wire ropes. "Gear, Chain and Wire Lubricant" may include food grade lubricants. "Gear, Chain and Wire Lubricant" does not include "Anti-Seize Lubricant," "Cutting and Tapping Oil," "Multi-purpose Lubricant," "Multi-purpose Dry Lubricant," "Penetrant," or "Silicone-based Multi-Purpose Lubricant."
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> "Gun Oil/Lubricant" means a product designed and labeled exclusively for the lubrication of firearms and/or the protection of firearm surfaces." Gun Oil/Lubricants may also reduce friction, heat and wear between moving parts, and/or displace moisture.
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> "Rust Preventive or Rust Control Lubricant" means any lubricant specifically designed or labeled primarily for the prevention or control of rust. "Rust Preventive or Rust Control Lubricant" may include food grade lubricants. "Rust Preventive or Rust Control Lubricant" does not include products used exclusively on firearms, mold release products, "Anti-Seize Lubricant," "Multi-purpose Lubricant," "Multi-purpose Dry Lubricant," "Penetrant," or "Silicone-based Multi-Purpose Lubricant."

CSPA believes that this approach will result in emission reductions equal or greater than those estimates for the limits proposed by ARB, while providing clearer definitions and less uncertainly regarding what products are subject to what limits. The proposal, in conjunction with existing definitions, would clarify that the following subcategories of lubricants are not regulated: Industrial-Use Only (not Consumer Products), Special-Purpose Silicone Lubricant,

Gun Oil, and Special-Purpose Dry Lubricants. It would also clarify that Food Grade products from the 2006 Survey are subject to regulation in these categories.

In addition, we believe that some of the products reported as Other Special Purpose Lubricants would fit the definitions above, including some that are Multi-Purpose Lubricants. Many of the products classified as SPLs in the 2006 Survey summaries are already covered by adopted VOC limits for Multi-Purpose Lubricants, Penetrants and other existing regulated categories. A few of the products are for Industrial Use Only. Of the remaining products, a few fall into the four SPL subcategories with limits to be adopted, a few fall into SPL categories suggested for deferment and a small portion fall into undefined categories.

CSPA is willing to work with ARB staff to determine the specific reductions that our proposal will obtain, but we are confident that additional reductions can be credited. We therefore urge ARB address this issue further in a 15-day notice subsequent to adoption of this regulation.

b. <u>There is a legitimate technical evidence to justify a 40% VOC limit for the aerosol form of Anti-Seize Lubricants</u>.

Aerosol anti-seize compounds generally consist of five major components – grease, graphite flakes, soft metal particles such as copper and aluminum, solvents and propellant. The composition of the first three components is usually the same as for a non-aerosol version of the product. In order to produce a properly functioning aerosol version, the compound must be miscible with and thinned with an appropriate solvent that allows for proper packaging. The compound is dispensed from the aerosol by the action of an appropriate amount of propellant that provides additional viscosity reduction and proper delivery characteristics. Addition of LVP solvents is not an option in this category.

In order for the compound to function properly after delivery, the dispensed product must return to its original grease state as rapidly as possible. This requires the use of a fast evaporating thinning solvent. Although acetone is a fast evaporating VOC-exempt solvent, it cannot be used in large amounts because it is not miscible with the petroleum-based greases that are used, causing them to coagulate and come out of solution. Slower evaporating solvents prevent the recovery of the grease by maintaining the diluted form. LVP-VOC solvents are not suitable for dilution for this reason.

Effective anti-seize lubricant is essential to the operation and maintenance of numerous types of equipment in commercial as well as industrial operations. Effective application of anti-seize lubricant is critical on threaded parts to prevent thread galling that can lead to the parts seizing and being essentially cold-welded together. Failure of these applications can lead to expensive down-time and equipment losses. Aerosol anti-seize lubricants are needed for applications where these threads are difficult to reach with non-spray products.

Based on these considerations, the maximum allowed VOC content for Anti-Seize Compound. Aerosol cannot be less than 40%. These products play an important role in equipment maintenance and must be applied and perform properly to prevent equipment damage and downtime. We therefore urge ARB to seek to have this issue addressed further in a 15-day notice subsequent to adoption of this regulation.

c. There is a legitimate need for the use of perchloroethylene to formulate Gear, Chain and Wire Lubricant and Cutting and Tapping Oil.

CSPA will support a chlorinated solvent prohibition for "Anti-Seize Lubricant" and "Rust Preventive or Rust Control Lubricant," but not for "Gear, Chain and Wire Lubricant" and "Cutting and Tapping Oil" where perchloroethylene is needed in some products that require the solvency, volatility, viscosity and/or low flammability that can only be obtained from chlorinated solvents. It is important to understand that although most such chlorinated-solvent products are not labeled as flammable, they still require label warnings that avoid container overheating or hazardous combustion products.

Product formulators have made a concerted effort to eliminate the use of chlorinated solvents from their products. However, as a practical matter, there are limited situations where the use of this compound should not be eliminated. CSPA is willing to work with ARB to clearly define where chlorinated solvents are needed in these two categories of lubricants and which products therefore must be excluded from any prohibition. We therefore urge ARB to seek to have this issue addressed further in a 15-day notice subsequent to adoption of this regulation.

d. CSPA suggests that the clarity of the regulation would be improved if all lubricant categories are grouped together.

In other areas of the regulation, ARB has made significant improvements to the clarity of the various provisions by grouping together products and provisions so that all similar provisions, added over many years and rulemakings, can be more clearly identified. We believe that this should now be done with Lubricants, which are regulated in categories whose definitions and standards are scattered throughout the regulation. We suggest that ARB consider listing all Lubricants together in the Table of Standards. We therefore urge ARB to seek to have this issue addressed further in a 15-day notice subsequent to adoption of this regulation.

8. Heavy-duty Hand Cleaner or Soap

Heavy-Duty Hand Cleaners serve important functions for many consumers and workers who come into contact with difficult to remove soils that are often can have dermatological impacts if not fully removed. To remove some of these soils requires significant amounts of VOC solvents, especially where adequate water is not available to assist in removal of the emulsified soils.

It is also important to note that much of the VOC content of these products currently consists of sustainable bio-based citrus extracts. We suggest that ARB should encourage the use of renewable and sustainable bio-based materials in these products. Bio-based materials are made by photosynthesis from carbon dioxide sequestered from the atmosphere and degrade into carbon dioxide and water, and therefore do not contribute to net carbon emissions or global warming. Renewable bio-based materials usable in these products are not listed as HAPs, TACs or on the Proposition 65 lists, and generally have very positive profiles for health and safety of humans and the environment. We believe that encouraging biobased materials is very consistent with the goals of the California Environmental Quality Act CEQA to minimize the other environmental and health impacts of regulations.

CSPA believes that an approach is needed that will allow for effective Heavy-Duty Hand Cleaners while reducing VOCs in a manner that does not inhibit the use of renewable and sustainable bio-based VOC materials or increase the use of materials that increase net carbon emissions.

CSPA therefore is willing to accept the 1% limit proposed for "Heavy-Duty Hand Cleaner or Soap" if a 5% VOC limit is allowed for "Special-Purpose Heavy-duty Hand Cleaner" defined as those labeled exclusively for removal of a few specific hard-to-remove soils where water is not available for rinsing. We therefore ask the ARB to consider the following changes to the proposed rule

ARB should add or modify the following definitions in Section 94508:

> "Special-Purpose Heavy-Duty Hand Cleaner" means a product designed and labeled exclusively to remove specific soils such as adhesives, asphalt, creosote, PCB's, tar, tree sap, or soot from the hand without necessitating the use of water. "Special-Purpose Heavy-duty Hand Cleaner" does not include prescription drug products, "Antimicrobial Hand or Body Cleaner or Soap," "Astringent/Toner," "Facial Cleaner or Soap," "General-use Hand or Body Cleaner or Soap," "Medicated Astringent/Medicated Toner" or "Rubbing Alcohol."
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> "Heavy-Duty Hand Cleaner or Soap" means a product designed to clean or remove a variety of more difficult dirt and soils such as oil, grease, grime, shellac, putty, printer's ink, paint, graphite, or cement, from the hand with or without the use of water. "Heavy-duty Hand Cleaner or Soap" does not include prescription drug products, "Antimicrobial Hand or Body Cleaner or Soap," "Astringent/Toner," "Facial Cleaner or Soap," "General-use Hand or Body Cleaner or Soap," "Special-Purpose Heavy-Duty Hand Cleaner," "Medicated Astringent/Medicated Toner" or "Rubbing Alcohol."
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> "General-use Hand or Body Cleaner or Soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. "General-use Hand or Body Cleaner or Soap" includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. "General-use Hand or Body Cleaner or Soap" does not include prescription drug products, "Antimicrobial Hand or Body Cleaner or Soap," "Astringent/Toner," "Facial Cleaner or Soap," "Hand Dishwashing Detergent" (including antimicrobial), "Medicated Astringent/Medicated Toner," or "Rubbing Alcohol."

ARB should add the following product categories, VOC limits and effective dates to the Section 94509 Table of Standards:

Product Category	VOC Standard	Effective Date
Special-Purpose Heavy-Duty Hand Cleaner	5%	Dec. 31, 2013
Heavy-Duty Hand Cleaner or Soap	1%	Dec. 31, 2013

The soils included in the "Special-Purpose Heavy-Duty Hand Cleaner" definition are the primary soils encountered by safety, military and repair personnel working out of mobile units in the field

without access to running water. This approach is also similar to the approach used by Green Seal, where they are divided as follows:

- GS 41 A (Institutional Hand Cleaners): 1% VOC maximum
- GS 41 B (Industrial Heavy Duty Hand Cleaners): 8% VOC maximum

CSPA believes that the approach proposed by CSPA will allow for effective Heavy-Duty Hand Cleaners while also reducing VOCs. It would also do so in a manner that does not unduly inhibit the use of renewable and sustainable, bio-based materials, or increase the use of nonrenewable materials that increase net carbon emissions, which we believe are important goals for ARB as well as our industry.

CSPA has surveyed major marketers of these products to determine which would be subject to the 1% limit and which to the 5% limit per this proposal. The survey covered 126 products, of which 15 would be classified as "Special-Purpose Heavy-Duty Hand Cleaners" as defined above. A copy of the specific survey results can be provided to ARB to allow emission reductions to be calculated for these categories and limits. We therefore urge ARB to seek to have this issue addressed further in a 15-day notice subsequent to adoption of this regulation.

9. Flying Bug Insecticide (Aerosol)

Based upon the technical data submitted to ARB by CSPA members, there is ample evidence to support the need to maintain an adequate amount of VOC ingredients for ensuring the efficacy of this important public health product. The proposed 20% VOC limit constitutes a significant reduction from the current regulatory limit. Adequate levels of propellants are needed in these products to allow the uniformly small particle size necessary for efficacy while minimizing active ingredient levels. Notwithstanding this significant reduction in the VOC content for this product category, CSPA member companies commit to expend the considerable amount of money to conduct the extensive research, development and engineering efforts necessary to ensure that the reformulated products are effective while maintaining the low active ingredient levels in current products.

This product category is subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[3] and the California Food and Agricultural Code.[4] Under both federal and state law, any new formulation of FIFRA-regulated products must be reviewed and approval by both the U.S. Environmental Protection Agency and the California Department of Pesticide Regulation before the product may be offered for sale. In addition to reformulation, this need for data generation, review and registration by both the federal and state agencies imposes a significant additional – and time-consuming – requirement on product manufacturers. Therefore, the December 31, 2013, effective date for this product category is both reasonable and necessary.

10. Wasp or Hornet Insecticide (Aerosol)

ARB's proposal to set a 10% VOC limit for this important public health product presents a significant technological challenge for manufacturers. Notwithstanding these challenges, CSPA member companies commit to expend the considerable amount of money needed to conduct the

[3] *See generally* 7 U.S.C. §§ 136-136(y).
[4] Cal. Food & Agric. Code §11501.

extensive research, development and engineering efforts necessary to ensure that the reformulated product remains effective and affordable to consumers – and especially for low-income households.

This product is also subject to regulation under FIFRA and the California Food and Agricultural Code. In addition to the time-consuming review and registration process there is an additional time constraint factor that further complicates manufacturers' efforts to reformulate this product category: the window of opportunity to test this product category is limited to summer months of July and August (the two months in which wasps and hornets are most active). Therefore, the December 31, 2013, effective date for this product category is both reasonable and necessary.

11. Furniture Maintenance Product (Aerosol)

ARB's proposal to set a 12% VOC limit for this product category constitutes a significant reduction of the currently applicable regulatory standard. CPSA member companies commit to work diligently to meet this ambitious challenge of reformulating this product category to meet ARB's stringent new VOC limit while ensuring that products will meet the needs of consumers who rely upon these products to maintain their expensive furniture.

Based upon the technical data presented to ARB, it is abundantly clear that extra time is needed to accomplish reformulations and packaging/spray technology changes, and product testing, including the consumer testing and storage and stability testing required for these types of aerosol products. Thus, the proposed 2013 effective date for the revised VOC limit is both reasonable and necessary.

12. Metal Polish / Cleanser (Aerosol and Non-aerosol)

This broadly defined category of products performs many separate and distinct functions on different metal substrates for a variety of household, institutional, and commercial users. ARB's proposal to establish a 15% VOC limit for the aerosol form and a 3% VOC limit for the non-aerosol form of this product category poses significant technological challenges for manufacturers. Despite these challenges, CSPA member companies commit to expend the time and monetary resources to conduct research, development and engineering efforts need to reformulate our products to meet ARB's very stringent VOC limits for both forms of this product category.

In addition, CSPA member companies do not oppose ARB's proposal to ban the use of perchloroethylene, methylene chloride and trichloroethylene in this product category.

B. Comments on ARB Staff's Proposals for Other Regulatory Requirements

1. CSPA Generally Supports the Proposed Revision to the Most Restrictive Limit Provision.

ARB's proposed revision to 17 CCR § 94512(a)(3) provides clear regulatory language to address situations in which product category definitions may have the unintended effect of excluding each other (thus potentially causing the product to be outside the scope of ARB's statewide

regulation). CSPA generally supports the "bright line" guidance provided by this proposed revision because this is the type of clarity needed for manufacturers to ensure that their products comply with the appropriate and applicable VOC limits.

However, CSPA believes that ARB may have unintentionally removed an important text of the existing regulation stating that this provision does not apply to certain Disinfectant/Sanitizer products. Thus, CSPA urges ARB to restore the following text from the existing regulation:

> Notwithstanding the foregoing above, this provision does not apply to "Disinfectant"/"Sanitizer" products labeled as "Bathroom and Tile Cleaners," "Glass Cleaners," "General Purpose Cleaners," "Toilet/Urinal Care Products," "Metal Polishes," "Carpet Cleaners," or "Fabric Refreshers" that may also make disinfecting/sanitizing or anti-microbial claims on the label.

Unless this language is restored, the adoption of the amended language may have the unintentional immediate effect of changing the regulatory status of many products that make disinfection/sanitization claims, resulting in those products no longer being in compliance with current VOC limits. We urge ARB to address this issue in a subsequent 15-day notice. CSPA also requests the opportunity to work with ARB staff in the future to identify and remedy any additional problems related to the proposed revision to 17 CCR § 94512(a)(3).

2. <u>ARB's New Tables Set Forth at 17 CCR §§ 94509(m)(1)-(2) and § 94509 (n)(1) Enhance the Overall Clarity of the Regulation</u>.

CPSA generally supports ARB's decision to develop three tables to summarize applicable restrictions on the use of certain chemical compounds in specifically enumerated product categories. Under the current regulation these prohibitions are spread out in seven different subsections of 17 CCR § 94509. At a minimum, presenting pertinent information in three tables eliminates duplicative language in the seven subsections contained in the current regulation. As a practical matter, this is the type of information that is more clearly presented in a table format rather than in formal regulatory language.

We believe, however, that an inadvertent error was made in deleting subsection 94509(q)(5) which exempts some Penetrants from the requirements of that section. We support this being corrected in a 15-day notice subsequent to adoption.

3. <u>CSPA Questions But Does Not Oppose the Prohibition of Alkylphenol Ethoxylate Surfactants in Certain Categories</u>

Proposed Section 94509(m)(3) would prohibit the use of alkylphenol ethoxylate (APE) surfactants in five categories of products for which revised VOC limits are proposed. Since these and other surfactants are reported in the 2006 Survey as grouped organics, adequate data do not exist to determine to what degree these surfactants are used in the categories of products. Although we do not believe that this prohibition is justified based on the environmental impacts of the low levels of use of APEs in these products, and know of no reason to believe that any additional APEs would be used in reformulating these products to meet the lower VOC limits, CSPA will not oppose the addition of this prohibition.

4. CSPA Supports Appropriate Revisions to Method 310

Two modifications are being proposed to ARB Method 310, the first to facilitate the determination of aromatic compound content in Multi-Purpose Solvents and Paint Thinners, and the second to determine compliance with the Fabric Softener Single Use Dryer Product VOC limit.

Regarding the proposed addition of test methods for aromatic content, there are many analytical methods that may be use for analyzing the aromatic content in hydrocarbon solvents, but there is no one single method that can be used to conduct an accurate analysis. We understand that this was described more completely in a telephone conversation between ARB staff and representatives of a CSPA member company. Moreover, there may be confounding factors in some analytical methods. As a threshold matter, the chemist must know which compounds are contained in the product that is being analyzed. Then, the analytical chemist must select the method that is most appropriate for measuring that those specific compounds. For example a method used for an LVP would not be appropriate for a non-LVP.

Thus, CSPA believes that having a list of analytical methods is useful, but urges ARB to include a caveat or disclaimer that care must be taken in determining the most appropriate method or methods to use. In addition, CSPA believes that the methods listed by ARB and any other method that can be demonstrated to be equivalent to the listed methods should be allowed to be used. This is particularly true for the ultraviolet absorption method that is commonly used in industry for detecting aromatic content. Attached please find a matrix assessing the capabilities and limitations of the various analytical test methods listed by ARB.

As it relates to the addition on calculation of VOC content of dryer sheets, CSPA supports the position of the American Cleaning Institute, which will be filing comments in this area.

C. Comments on Other Sections of the Initial Statement of Reasons

1. ARB Overstates the Degree to Which It Has Been Established that This Regulation is Necessary to Meet Ozone Standards.

In the Initial Statement of Reasons (ISOR), it is noted that the reductions from this rulemaking are part of the State Implementation Plan (SIP) adopted by ARB in 2007, and would be the "third increment toward fulfilling the commitment for VOC reductions for consumer products" (page I-4). It is further stated that, "Because California has unique air quality problems, reducing VOC emissions from all categories, including consumer products, to the maximum extend feasible, is necessary to attain the federal and state ambient air quality standard for ozone" (page I-5). In addition, it is noted that future population growth are projected to cause increased emissions from consumer products (page IV-25).

Later in the ISOR, ARB states:

> Because significant further VOC emissions reductions are necessary to attain the national and State ozone standards, the reductions from the amendments proposed in this report are therefore "necessary" within the meaning of section 41712 of the Health and Safety Code. In addition, section 41712(b)(1) of the Health and Safety Code provides that the "necessity" of a regulation is to be evaluated in terms of both the State and federal standards.

> The applicable State and federal laws show that both the U.S. Congress and the California Legislature intended progress toward clean air be made as quickly as possible. The CCAA specifically declares that it is the intent of the Legislature that the State air quality standards be achieved "...by the earliest practicable date..." (See Health Technical Support Document Chapter V – 40 and Safety Code, sections 40910 and 40913(a); see also the uncodified section 1(b)(2) of the Act (Stats. 1988, Chapter 1568)). A similar intent is expressed in the federal Clean Air Act, which declares that the federal air quality standards are to be achieved "...as expeditiously as practicable..." (See sections 172(a)(2), 181(a), and 188(c) of the federal Clean Air Act). For all of the reasons described above, the proposed amendments are "necessary" within the meaning of section 41712 of the Health and Safety Code.

CSPA disagrees that these arguments are adequate to demonstrate that this regulation is "necessary to attain the federal and state ambient air quality standard for ozone" as required by Section 41712(b)(1) of the Health and Safety Code. Although it is true that further VOC reductions for consumer products were included in the California SIP adopted in 2007 (but not yet approved by EPA), there was no attempt in the SIP process to determine whether or not each of the reduction goals set for various emission categories were necessary to attain the ozone standard. The process by which the SIP goals were designated involved essentially reducing all VOC emission sources and all NOx emission sources until modeling showed attainment of the standard at all locations in the modeled region. But different sources have very different impacts on ozone formation per mass emissions, due to varying photochemical reactivity and geographic differences in where the emissions occur. There were no subsequent sensitivity runs to determine whether it was necessary to reduce all of the sources by those targeted amounts to reach attainment. CSPA believes that sensitivity runs must be included in SIP development if ARB is to meet its requirement to demonstrate that the reduction goal for consumer products is "necessary."

Subsequent to the 1994 California SIP revision, CSPA and other consumer product industry associations conducted a study to assess the sensitivity of ozone in the South Coast and Sacramento air basins to consumer product VOC emissions. Our 1997 attainment remodeling study was conducted under 2010 attainment conditions that remained highly sensitive to overall VOC emissions. The results of that study demonstrated that even under highly VOC-limited conditions where ozone formation is highly sensitive to overall VOC levels, ozone formation was *not* at all sensitive to consumer product VOC emissions.

The attainment demonstration modeling for the 2007 SIP and South Coast AQMP, on the other hand, was under atmospheric conditions that are far more NOx-limited, and far less sensitive to overall VOC emissions. We therefore had reason to expect that consumer product VOC emissions should have even less relative impact on ozone attainment in this 2023 attainment scenario. To determine whether this was indeed the case, CSPA contracted in 2007 with Sierra Research and Environ to conduct a remodeling study, co-funded by nine national consumer product industry associations, to determine the ozone sensitivity of consumer product VOC emissions in the South Coast in 2023, and determine what level of emission reductions might actually be necessary. The remodeling study was completed along with the final report from the study, "Assessment of the Need for Long-Term Reduction in Consumer Product Emissions in the South Coast Air Basin."[5]

[5] Sierra Research Repot No. SR2007-09-03, September 12, 2007.

The results of the Sierra Research study clearly demonstrated that ozone attainment status in the South Coast district would not be impacted in 2023 if no further reductions in consumer product VOC emissions are made after 2014. The data show that the 50 tons per day of additional statewide consumer products VOC emissions reductions suggested in the South Coast AQMP would have no impact on ozone attainment anywhere in the South Coast. These VOC emission reductions would likely cost the consumer products industry more than $1 billion just to determine their feasibility, despite not being necessary for ozone attainment.

The modeling data supplied by South Coast to Environ for their modeling runs also provided important information regarding the District consumer product measures proposed in the AQMP as CTS-01, CTS-03 AND CTS-04, which are listed as seeking 1.9, 2.1 and 5.8 tons per day VOC reductions in South Coast, respectively, and appear to be included by the District as "backstop" measures to be implemented only if the similar state consumer product measures are not implemented. Environ and Sierra Research indeed found that two of these three measures were not used to make additional reductions in the consumer products inventory in the ozone attainment demonstration for 2023. The reduction commitment for CTS-01 is made to other emissions categories and no reduction was made to consumer products emissions. The reduction commitment for CTS-04 was not used to reduce any emissions category. Only the reduction from CTS-03 was used in the District's attainment runs.

CSPA continues to believe that the results of these types of source-sensitivity studies provide important information to support the development of effective ozone attainment strategies. It is important that the control measures in the SIP be focused primarily on those emissions sources (both VOCs and NOx) that play a significant role in ozone non-attainment in the South Coast and other nonattainment districts. The need to carefully consider the relative ozone impacts of various emission sources also provides further reasons for the allocation of emissions reductions in the "Black Box" to remain unspecified in this SIP revision. This would allow further data to be developed to show what emissions sources and reductions are actually necessary for ozone attainment.

2. <u>CSPA Continues to Disagree with ARB's Outlined Interpretations of the Terms Technological and Commercial Feasibility</u>

ARB outlines in the ISOR its interpretation of the key statutory term, "technologically and commercially feasible," which all VOC limits set for consumer products are required to be (pages III-12 to III-14). CSPA continues to disagree with the interpretation outlined, and believes that the argument presented in the ISOR not only misrepresents industry's position, but also posits an extreme interpretation that has seldom if ever been used by ARB, and should not be used in the future.

ARB argues that technological and commercial feasibility must be evaluated separately, and that a limit can be established to be technologically feasible if at least one product in the category is in compliance or the limit can reasonably be met through "additional development efforts." CSPA continues to disagree that one or a few complying products in a category—products that may be used for different purposes by different consumers—can demonstrate that a VOC limit is feasible for all of the products in a broad category. CSPA even more adamantly disagrees that product technology posited by ARB that has never been developed or marketed can be deemed to be technologically or commercially feasible by ARB.

In interpreting the term "commercial feasibility," ARB uses the *International Harvester* case[6] to argue that all consumer preferences do not have to be met as long as "basic market demand" is met. The example given relates to glass cleaners, where products without the smell of ammonia is a consumer preference, and can be used to replace VOC solvents. This example is not only technically incorrect as it relates to product technology, but also as it relates to CSPA's position. It is not consumer "preference" that we believe must be maintained for a limit to be considered feasible, but the effectiveness of the product in accomplishing the tasks for which it is used.

Moreover, CSPA believes that ARB has sought to assure the feasibility of its proposed limits and other provisions in a manner more consistent with our interpretation of the term technologically and commercially feasible than the interpretation outlined in this ISOR. It is vitally important that ARB continue to do so, and not revert to an extreme and unreasonable interpretation that would result in limits that would not allow effective products in California, and result in loss of consumer benefits, loss of California businesses that rely on effective products, or forcing consumers to substitute other products or materials that may result in higher air quality impacts.

3. CSPA Agrees that Adequate Data Exists for Most If Not All of the Proposed Provisions

CSPA generally concurs with ARB's assessment that the 2006 Consumer and Commercial Products Survey and other related data collection provides adequate data upon which to base the VOC limits proposed in this rule (page V-34). CSPA's concerns raised in these comments primarily relate to the interpretation of that data in establishing technologically and commercially feasible standards. This may not be true, however, for all of the provisions being proposed. Alkylphenol ethoxylate surfactants, for instance, were reported in the 2006 Survey as grouped organics along with other non-speciated LVPs, and the survey cannot provide adequate data on the extent of their use, or the costs that might be incurred by the proposed prohibition.

4. CSPA Generally Concurs that ARB's Economic Impact Assessment for this Proposal is Performed Consistent With Other Rulemakings But Questions Some Cost Estimates.

The proposed regulation would require reformulation of 1,467 products (see page V-37) and estimates total industry costs of approximately $50 million (annual costs of $5 million over 10 years) (see page VIII-109). This works out to $34,000 per product. While many product reformulations proposed to be required can be accomplished for this cost, many others will require up to ten times as much to reformulate. In addition, as VOC limits are further and further reduced, it becomes more and more likely that initial reformulations will not prove commercially feasible, requiring further costs, or even loss of product markets.

Among the most questionable assumptions and cost estimates the tables seen in Chapter VIII were the following:

- Zero recurring costs for more expensive ingredients in General Purpose Cleaners. It appears that this is based on the difficult-to-explain assumption that these products do not contain any surfactants, and will comply by reducing the use of LVP solvent by two percent and increasing the use of LVP glycol ethers by 0.5% (*see* Appendix D-3). The ingredients listed for existing products do not conform with any existing products (or the

[6] *International Harvester Company v. Ruckelshaus*, 478 F. 2d 615 (D.C. Cir. 1973).

category as a whole) and the changes in ingredients postulated for complying make even less sense.

- Low-Estimate reformulation costs for reformulating insecticides of $1,641 for Flying Bug and $298 for Wasp or Hornet. These costs are at least one and possibly two orders of magnitude low. The regulatory paperwork alone far exceeds these estimates for these FIFRA-regulated products.

- Zero recurring costs for more expensive ingredients for Flying Bug Insecticide that is based on *reducing* the level of surfactants from 2% to 1%, *reducing* LVP solvents from 9% to 8%, and *reducing* LVP Glycol Ether from 5% to 4%. We know of no sensible reason to predict that VOC reductions will be made in a manner that *reduces* costly non-VOC ingredients.

- The assumption that the already underestimated low-estimate of nonrecurring costs is incurred per company instead of per product in calculating total industry costs (*see* Table VIII-3). There is no possible economy of scale that would allow a company to reformulate their entire product line for a few hundred dollars.

- The assumption that pesticide and disinfectant (FIFRA-registered) products barely exceed other household products in low-estimate of nonrecurring product development costs (Appendix E, Table E-1) and in the high-estimate cost are actually cost less to reformulate (Appendix E, Table E-2). In the categories regulated, FIFRA products will always cost significantly more to reformulate. This explains some of the anomalous cost estimates noted above.

We would also note that assumption that "we do not expect manufacturers to sell and distribute California-only products" may become less valid in the future. In a recent survey of member companies relating to "reasonably prudent precautions" taken to avoid non-California products being distributed in the state, CSPA found that a growing percentage of products are now being formulated for sale outside of California, and products whose sales are primarily or solely in California could occur if provisions become too restrictive for effective products to be sold in the state.

5. <u>CSPA Supports ARB's Planned Actions to Clarify the Distinction between General Purpose vs. Specialty Products</u>.

CSPA supports ARB's decision, as noted in the Initial Statement of Reasons **(**page ES-16**)** to develop an enforcement advisory to provide needed clarity regarding the distinction between "general purpose" or "multi-purpose" products and products that are formulated to serve a specific purpose only. It is important to clarify this issue since it could impact the feasibility of some of the limits being considered in these 2010 Amendments. CSPA looks forward to working with other interested stakeholders and ARB staff on this important clarification.

6. CSPA Supports ARB's Planned Action to Clarify the Provisions Relating to "Minimum Recommended Dilution" and "Incidental Use."

Under the current regulation, the applicable "minimum recommended dilution" requirements do not apply to recommendations for the "incidental use of concentrated product to deal with limited special application such as hard-to-remove soils or stains." 17 CCR §§ 94509(b)(1). CSPA supports ARB's decision, as noted in the Initial Statement of Reasons **(**page ES-16**)**, to develop an enforcement advisory to provide needed clarity regarding this provision. CSPA also looks forward to working with other interested stakeholders and ARB staff on this important clarification.

SUMMARY AND CONCLUSIONS

During this rulemaking process, CSPA worked closely and cooperatively with ARB staff, environmental groups, air districts and various other stakeholders as part of the Consumer Products Regulation Workgroup (CPRWG). As a result of this open and transparent process, ARB Staff developed and proposed challenging new VOC and GWP limits that will provide significant emission reductions. The ARB Staff should be commended for efforts to conduct a fair and thorough rulemaking process to develop this major regulation.

The proposed new and revised VOC limits and related enforcement provisions present very serious and costly reformulating and marketing challenges. CSPA hopes that the proposed VOC limits will prove feasible in the time frames allowed for compliance. Notwithstanding these significant challenges, CSPA members commit to initiate actions necessary to reformulate a broad range of products to meet these challenging new VOC limits with the understanding that ARB staff will address several issues in a 15-day notice subsequent to adoption of this regulation.

CSPA is not opposing in these comments most of new VOC limits and other provisions being proposed as 2010 Amendments to the Consumer Products Regulation. We do, however, ask that a few proposed limits and provisions be deferred into a 15-day comment period so that we can continue work with ARB to assure that all provisions are commercially and technologically feasible.

Once again, we expresses our appreciation for the opportunity to comment on the ARB staff's proposed amendments to California's very stringent and comprehensive Consumer Products Regulations. Please contact us any time if you have questions regarding any of the issues raised in these comments.

Respectfully submitted,

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Assessment of Test Methods to Measure Aromatic Hydrocarbons in Multi-Purpose Solvents and Paint Thinners for Inclusion in ARB Method 310

Test Method	Summary Description	Suitable for Purpose (Yes/No/Maybe)	Capabilities / Limitations
ASTM D 5443	Multi-column GC method that provides paraffinic, naphthenic, and aromatic fractions of hydrocarbon mixtures including separation by carbon number for the lower carbon numbers	Maybe	Method covers typical VOC and LVP boiling ranges up to 270 ºC; non-hydrocarbons (e. g., oxygenated solvents) may co-elute within hydrocarbon groups and give erroneous results
ASTM D 3257	Single, polar column GC method that separates aromatic hydrocarbons from non-aromatic hydrocarbons within mineral spirits range	Maybe	LVP range aliphatic hydrocarbons with boiling points > 235 ºC (n-C13) may co-elute with aromatics and give erroneous results; non-hydrocarbons (e. g., oxygenated solvents) may co-elute with aromatics and give erroneous results
ASTM D 3710	Gas chromatography distillation (GCD) method that separates gasoline components by boiling ranges	No	Method does not separate aromatics from non-aromatics
ASTM D 3606	2-column GC method that collects components lighter than octane and then uses a polar column to separate and measure individual component concentrations, in particular, benzene and toluene	No	Method does not measure C8 and higher aromatics

ASTM D 5580	2-column GC method that splits off groups of aliphatic and aromatic species in finished gasoline via a polar column and back flush and then measures remaining components	Maybe	Many oxygenated solvents are split off with aliphatic hydrocarbons and do not interfere; aliphatic hydrocarbons C12 and higher may interfere with C9 and higher aromatics
EPA 8021 (replaces EPA 602/8020)	General GC method used to measure concentrations of specific compounds	No	Does not identify all aromatic compounds that could be present in multi-purpose solvents and paint thinners
EPA 8015	General GC method used to measure concentrations of specific compounds or ranges of organics (gasoline range organics, diesel range organics)	No	Does not separate aromatics from non-aromatics in organic ranges; does not identify all aromatic compounds that could be present in multi-purpose solvents and paint thinners
EPA 8270	General GC/MS method to measure concentrations of specific semi-volatile organic compounds (SVOCs)	No	Does not identify all aromatic compounds that could be present in multi-purpose solvents and paint thinners; "in most cases the method is not appropriate for the quantitation of multi-component analytes"
RECOMMENDED METHOD			
AFNOR NF M07-073	UV absorption method to measure aromatics in heating fuels and other mainly saturated hydrocarbons	Yes	Measures aromatics in the VOC and LVP range; aliphatic hydrocarbons and oxygenated solvents do not interfere; may need to break emulsion products before analyzing; may need to skip acid wash step if water and/or oxygenated solvents are present; method written in French

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