

State of California
AIR RESOURCES BOARD

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

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

Considered at a Public Hearing on June 26, 2008
Agenda Item No. 08-6-5

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I.

INTRODUCTION

On June 26, 2008, the Air Resources Board (the "Board" or "ARB") conducted a public hearing to consider amendments to the California Consumer Products Regulation, sections 94507-94517, title 17, California Code of Regulations (CCR). An Initial Statement of Reasons for Proposed Rulemaking (ISOR or staff report) was prepared and made available to the public on May 9, 2008. The ISOR is incorporated by reference herein. This Final Statement of Reasons for Rulemaking (FSOR) updates the ISOR by identifying and explaining the modifications that were made to the original proposal. The FSOR also summarizes the written and oral comments received during the rulemaking process, and contains the ARB's responses to those comments.

At the hearing, the Board approved Resolution 08-30, which initiated steps toward final adoption of the proposed amendments. The approved amendments included modifications to the originally proposed language. All of the modifications to the original proposal are described in Section II of this FSOR entitled "Modifications Made to the Original Proposal." In accordance with Government Code section 11346.8(c), Resolution 08-30 directed the Executive Officer to adopt the modified regulations after making the modified regulatory language available for public comment, and to make such additional modifications as may be appropriate in light of the comments received.

A "Notice of Public Availability of Modified Text" together with a copy of the full text of the regulation modifications, with the modifications clearly indicated, were mailed on August 12, 2008, to each of the individuals described in subsections (a)(1) through (a)(4) of section 44, title 1, CCR. By this action the modified Consumer Products Regulation was made available to the public for a 15-day comment period from August 12, 2008 to August 27, 2008, pursuant to Government Code section 11346.8. The Executive Officer then determined that no additional changes should be made to the regulations, and subsequently issued an Executive Order, by which the modified Consumer Products Regulation was adopted.

As defined in Government Code section 11345.5(a)(6), the Board has determined that this regulatory action will not create costs or savings to any State agency, nor affect federal funding to the State. The Board has also determined that this regulatory action will not create costs or impose a mandate upon any local agency or school district, whether or not it is reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, title 2 of the Government Code; or affect other non-discretionary savings to state or local agencies. In preparing the regulatory proposal, the ARB staff considered the

potential economic impacts on California business enterprises and individuals. A detailed discussion of these impacts is included in the ISOR. The adopted regulations are considered "major regulations" within the meaning of Health and Safety Code section 57005 (enacted by Senate Bill 1082: Stats.1993, ch. 418), because the regulations will have an economic impact on the State's business enterprises in an amount of approximately \$26 million dollars per year. During the 45-day and 15-day comment periods, no alternatives or combination of alternatives were submitted to the ARB which would be equally effective as the proposed regulations (i.e., no alternatives, or combination or alternatives, were submitted which would achieve at least the equivalent level of environmental protection within the same time frame as the proposed regulations.)

The Board has determined that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or which would be as effective and less burdensome to affected private persons or business, than the action taken by the ARB.

II.

MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

Various modifications to the original proposal were made in order to address comments received during the 45-day public comment period, and to clarify the regulatory language. These modifications are described below.

A. Section 94508. Definitions:

Section 94508(a)(58) The definition of "Floor Maintenance Product" was modified to clarify the types of products subject to the VOC standard.

Section 94508(a)(107) The definition of "Not for Retail Sale" was removed.

Section 94508(a)(115) The definition of "Personal Fragrance Product" was modified to clarify the types of products subject to the VOC standard.

Section 94508(a)(131) The definition of "Sealant or Caulking Compound" was modified to clarify the types of products subject to the VOC standard.

B. Section 94509. Standards for Consumer Products:

Section 94509(a) A modification was made to the "Table of Standards" to specify that the "Motor Vehicle Wash" limit is applicable only to "non-aerosol" product forms.

C. Section 94512. Administrative Requirements:

Section 94512(d)(1) A modification was made to the additional labeling requirements to specify the effective dates for the "Sealant or Caulking Compound (non-aerosol)" category.

D. Miscellaneous: Several minor modifications, such as renumbering subsections and correcting dates, were also made throughout the regulatory language.

III.

CORRECTIONS TO THE REFERENCES LISTED IN THE INITIAL STATEMENT OF REASONS

Staff has identified a number of typographical errors and other minor problems in some of the references that were listed in the ISOR. For clarity, following is an identification of these errors and the necessary corrections.

1. The following two references cited in the reference list on pages 23 and 24 in the Executive Summary were corrected as follows:

In the reference cited for (CA DOF, 2007), "444,000" is hereby changed to read: "470,000." This is a typographical error. Note the reference is correctly cited in the reference list on page 177. The correct reference should be as follows:

California Department of Finance. Report: State Adds 470,000 in 2006: 2007 Population Nears 37.7 Million. May 1, 2007.

The reference for (Dupont & Falcon, 2004) was corrected for grammatical and typographical errors. To improve clarity and consistency, the author's company affiliations were added. The correct reference should be as follows:

DuPont Company in association with Falcon Safety Products.
Fluorochemicals Laboratory DuPont Company Technical Report, Subject: Cleaning Tests for Aerosol Dusting Aids (Dusters). December 1, 2004.
Schweitzer, M., Ludert, J., Hitches, B., Creazzo, J.A. (DuPont Company).
Bilsback, B., McLeer, D. (Falcon Safety Products).

2. The reference (CA DOF, 2007) cited in the reference list on page 46 was corrected for typographical errors, (see correction 1).
3. The following three references cited in the reference list on page 47 were corrected as follows:

The reference for (Dominici *et al.*, 2006) erroneously referenced the publication as being published in Volume 925. Volume "925" is hereby changed to Volume "295." This is a typographical error. The correct reference should be as follows:

Dominici, F., Peng, R.D., Bell, M.L., Pham, L., McDermott, A., Zeger, S.L., Samet, J.M. Fine Particulate Air Pollution and Hospital Admission for Cardiovascular and Respiratory Diseases. 2006. Journal of American Medical Association. Volume 295. Number 10: 1127-1134.

The reference for (Gauderman *et al.*, 2005) was corrected for spelling errors. The correct reference should be as follows:

Gauderman, W.J., Avol, E., Lurmann, F., Kuenzli, N., Gilliland, F., Peters, J., and McConnell, R. Childhood Asthma and Exposure to Traffic and Nitrogen Dioxide. 2005. *Epidemiology*. Volume 16. Number 6: 737-743.

The names of three contributing authors were erroneously omitted from the reference for (Gauderman *et al.*, 2004). The omitted authors and were added to the citation and the reference was corrected for spelling errors. The correct reference should be as follows:

Gauderman, W.J., Vora, H., McConnell, R., Berhane, K., Gilliland, F., Thomas, D., Lurmann, F., Avol, E., Bates, D., Margolis, H., Rappaport, E., Kuenzli, N., Jerrett, M., and Peters, J. The Effect of Air Pollution on Lung Development from 10 to 18 Years of Age. 2004. *New England Journal of Medicine*. Volume 351. Number 11: 1057-1067.

4. The following two references cited in the reference list on page 48 were corrected as follows:

The reference for (Gilliland *et al.*, 2001) erroneously cites pages 12-43 as being relied upon for supporting documentation for this rulemaking. The correct citation is to pages 43-54. This is a typographical error. The correct reference should be as follows:

Gilliland, F.D., Berhand, K., Rappaport, E.B., Thomas, D.C., Avol, E., Gauderman, W.J., London, S.J., Margolis, H.G., McConnell, R., Islam, K.T., and Peters, J.M. The Effects of Ambient Air Pollution on School Absenteeism Due to Respiratory Illnesses. 2001. *Epidemiology*. Volume 12. Number 1: 43-54.

The reference cited for (Krewski *et al.*, 2000) was corrected for typographical errors in spelling and punctuation. The correct reference should be as follows:

Krewski, D., Burnett, R., Goldberg, M.S., Hoover, K., Siemiatycki, J., Jerrett, M. *et al.* Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality. 2000. Research Report of the Health Effects Institute.

5. The following two references cited in the reference list on page 49 were corrected as follows:

The reference for (Miller *et al.*, 2007) erroneously cites the New England Journal of American Medicine as the publication in which the reference was

published. This is a typographical error. The correct publication is New England Journal of Medicine. The correct reference should be as follows:

Miller, K.A., Siscovick, D.S., Sheppard, L., Shepherd, K., Sullivan, J.H., Anderson G.L., and Kaufman, J.D. Long-term Exposure to Air Pollution and Incidence of Cardiovascular Events in Women. 2007. New England Journal of Medicine. Volume 356. Number 5: 447-458.

The reference for (Pope *et al.*, 2004) was corrected for typographical spelling errors. The correct reference should be as follows:

Pope, C.A. 3rd, Burnett, R.T., Thurston, G.D., Thun, M.J., Calle, E.E., Krewski, D., and Godleski, J.J. Cardiovascular Mortality and Long-Term Exposure to Particulate Air Pollution: Epidemiological Evidence of General Pathophysiological Pathways of Disease. 2004. Circulation. Volume 109: 71-77.

6. In the reference list on page 65, the reference for (Cote, 2006) erroneously cites April 8, 2008, as the date the referenced website was printed. This is a typographical error. The correct date is May 8, 2008. The correct reference should be as follows:

Cote, Ryan. How to Use an Astringent Skin Toner in Your Skin Care Routine. <http://ezinearticles.com/?How-to-Use-an-Astringent-Skin-Toner-in-Your-Skin-Care-Routine&id=360826>. May 8, 2008.

7. The reference for (Dupont & Falcon, 2004) cited in the reference list on page 147 was corrected for typographical and grammatical errors, (see correction 1).
8. The references contained in Chapter VII were corrected as follows:

The ISOR erroneously referenced (*Id*, Appendix D1) on page 163. The correct citation was changed to read: (ARB, 1991a).

The reference for (ARB, 2004a) cited on page 153 was omitted from the reference list on page 177. The omitted citation was added:

Air Resources Board. 2003 Consumer and Commercial Products Survey. November, 2004.

The reference for (ARB, 1989c) was erroneously cited in the reference list on page 178. The reference was not relied upon as supporting documentation for Chapter VII and the citation does not appear in the text. The erroneous citation was removed:

Air Resources Board. Technical Review Group's Proposed Architectural Coatings Suggested Control Measure - Staff Report. April 20, 1989.

9. The following two references cited in the reference list on page 204 were corrected as follows:

The reference for (Bowman *et al.*, 1994) erroneously referenced the publication as being published in 1995. The correct date is 1994. The correct reference should be as follows:

Bowman, F. M., Pilinis, C. and Seinfeld, J. H. Ozone and Aerosol Productivity of Reactive Organics. 1994. Atmospheric Environment. Volume 29: 579 589.

The reference for (Dupont & Falcon, 2004) was corrected for typographical and grammatical errors, (see correction 1).

IV.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Board received numerous written and oral comments during the 45-day and 15-day comment periods for this regulatory action. A list of commenters is set forth below with the date and form of all comments that were timely filed. Following the list is a summary of each objection or recommendation made regarding the proposal with an explanation of how the proposed action has been changed to accommodate the objection or recommendation, or the reasons for making no change.

Comments Received During the 45-day Public Comment Period

<u>Abbreviation</u>	<u>Commenter</u>
ACC	Sharon H. Kneiss Vice President, Products Divisions American Chemistry Council Written testimony: June 24, 2008
ALA	Bonnie Holmes-Gen American Lung Association of California (ALA) Oral testimony: June 26, 2008
ASTM	Jessica A. Hychalk Manager, Global Cooperation ASTM International Written testimony: June 3, 2008 Submitted by: Anne Meininger National Institute of Standards and Technology
Blaster-1	Paul Gardner General Manager/Plant Operations Blaster Corporation Written testimony: June 23, 2008
Blaster-2	Paul Gardner Blaster Corporation Oral testimony: June 26, 2008

CCA, et al.

Luis R. Cabrales, Senior Campaign and Outreach Associate
Coalition for Clean Air
Charlotte Brody, RN, Executive Director
Commonweal
Elina Green, MPH, Program Coordinator
Long Beach Alliance for Children with Asthma
Jesse Marquez, Executive Director
Coalition for a Safe Environment
Neil Gendel, Director
Healthy Children Organizing Project
Joel Ervice, Interim Director
Regional Asthma Management and Prevention
(RAMP) Initiative
Bill Magavern, Director
Sierra Club California
Dori Gilels, Executive Director
Women's Voices for the Earth
Adrian Martinez, Project Attorney
Natural Resources Defense Council
Rachel L. Gibson, Environmental Health Advocate & Staff
Attorney
Environment California
Andrea Ventura, Program Manager
Clean Water Action
Wafaa Aborashad, Executive Director
Bay Area Healthy 880 Communities – SL
Lenny Siegel, Executive Director
Center for Public Environmental Oversight
Angel De Fazio, BSAT, President
National Toxic Encephalopathy Foundation
M. Suzanne Murphy, Executive Director
Worksafe, Inc
Elise Miller, Executive Director
Institute for Children's Environmental Health
Arturo Carmona, Executive Director
Consejo de Federaciones Mexicanas en
Norteamerica (COFEM)
Anne Katten, Pesticide and Work Safety Specialist
California Rural Legal Assistance Foundation
Teresa Marquez, Land Use Committee Chair
Boyle Heights Resident Homeowners Association
James Roybal, President
Residents of Pico Rivera for Environmental Justice
Eden Flynn, Coordinator
Southern California Coalition for Occupational Safety
& Health (SoCalCOSH)

Martha Dina Arguello, Executive Director
Physicians for Social Responsibility-Los Angeles
Deborah Moore, Executive Director
Green Schools Initiative
James Provenzano, President
Clean Air Now
René L. Guerrero, Legislative Advocate
Planning and Conservation League
David Lighthall, Ph.D., Senior Scientist for Environmental
Health
Central Valley Health Policy Institute
Bradley Angel, Executive Director
Greenaction for Health and Environmental Justice
Allyson Holman, Chair
Merced/Mariposa County Asthma Coalition
Jose Luis Olmedo, Executive Director
Comite Civico Del Valle
Conner Everts, Executive Director
Southern California Watershed Alliance
Miguel A. Luna
Urban Semillas
Julia Liou, Planning and Development Manager
Asian Health Services
Manuel Criollo, Lead Organizer
Labor/Community Strategy Center
Written testimony: June 25, 2008

CCA-1 Luis Cabrales
Coalition for Clean Air
Oral testimony: June 26, 2008

CCA-2 Tim Carmichael
Coalition for Clean Air
Oral testimony: June 26, 2008

CEH Rufus Howell
Deputy Director
Center for Environmental Health
Written testimony: June 25, 2008

Clorox Victoria Jones
Director of Government Affairs
The Clorox Company
Written testimony: June 17, 2008

CRC	Adam Selisker CRC Industries Oral testimony: June 26, 2008
CSPA-1	D. Douglas Fratz Vice President, Scientific & Technical Affairs Joseph T. Yost Director, Strategic Issues Advocacy Consumer Specialty Products Association Written testimony: June 23, 2008
CSPA-2	D. Douglas Fratz Consumer Specialty Products Association Oral testimony: June 26, 2008
CSPA-3	Joseph T. Yost Consumer Specialty Products Association Oral testimony: June 26, 2008
DARCO-1	Darlene Coe DARCO Sales Written testimony: June 25, 2008
Falcon	Philip Lapin President/CEO Falcon Safety Products Written testimony: June 25, 2008
Fleet	Valerie Ramsey, RAC Director, Regulatory Affairs C.B. Fleet Company, Inc Fleet Laboratories Written testimony: June 23, 2008
FSC	Jerry Ulrich President Four Star Chemical Written testimony: June 23, 2008
Ghadially-1	Ruby Ghadially, M.D. Written testimony: June 13, 2008
Ghadially-2	Ruby Ghadially, M.D. Written testimony: June 23, 2008

Henkel	Ray Cull Director, R & D and Technical Services Henkel Written testimony: June 24, 2008
JRW	Emily Winchester JRW Ent. Inc. Written testimony: June 25, 2008
Lyondell	Dan Pourreau Technical Advisor LyondellBassell Industries Written testimony: June 25, 2008
Meguiar's	Gary Silvers Meguiar's Written testimony: June 23, 2008
NAA-1	Sean Fitzgerald President National Aerosol Association Written testimony: June 24, 2008
NAA-2	Doug Raymond National Aerosol Association Oral testimony: June 26, 2008
PCPC	Jim Mattesich Greenberg-Taurig (representing the Personal Care Products Council) Oral testimony: June 26, 2008
Plaze	John Davis Vice President of Technical Services Plaze, Inc./Claire Sprayway Written testimony: June 23, 2008
Radiator	Larry Beaver Vice President, Technology Radiator Specialty Company Written testimony: June 23, 2008
Ray	Linda Ray Written testimony: June 26, 2008

SCAQMD-1	Dr. William A. Burke Chairman of the Board South Coast Air Quality Management District Written testimony: June 20, 2008
SCAQMD-2	Barry Wallerstein South Coast Air Quality Management District Oral and written testimony: June 26, 2008
SDA-1	Kathleen Stanton Associate Director, Scientific Affairs Soap and Detergent Association Written testimony: June 20, 2008
SDA-2	Bob Hamilton (representing Access Business Group and the Soap and Detergent Association) Oral testimony: June 26, 2008
SEIU-1	Solange Echeverria Service Employees International Union (SEIU) Local 1877 Oral testimony: June 26, 2008
SEIU-2	Laura Rico Service Employees International Union (SEIU) Local 1877 Oral testimony: June 26, 2008
SherWill	Gregory L. Johnson Sherwin-Williams Company Oral testimony: June 26, 2008
Sierra	Bill Magavern Sierra Club Oral testimony: June 26, 2008
Stoner-1	Harry Zechman Chief Operating Officer Stoner Solutions Written testimony: June 23, 2008
Stoner-2	Harry Zechman Chief Operating Officer Stoner Solutions Oral testimony: June 26, 2008

Techspray Steve Cook
Director of Product Technology
Techspray
Written testimony: June 23, 2008

WD-40 Mike Freeman
WD-40
Oral testimony: June 26, 2008

YG Mark Sorensen
Yorkshire Guttering
Written testimony: July 1, 2008

During the 45-day comment period, a form letter was received from the following list of individuals. The letters all contained the same comments. These commenters are collectively referred to as CCAItr in Section A of this document.

CCAItr Adriana Franco
Alan Deane
Alex Gaytan
Alexandra Angle
Alexandra Salazar
Angelina Sanchez
Brenda Alira
Bud Mitchener
Charles Adelman
Christina Turrietta
Delia Cortez
Diana Duran
Dmitry Rychokov
Delores de Leon
Elizabeth Pascencia
Emanuela Giangregorio
Esther Aguirre
Esther Angel
Frank Gurule
George Patton
Giovanni Flores
Jack Conrad
Jason Weisgerber
Jennifer Toledo
John Bell
Johnny Malone Jr.
Jose Lucero
Karen Klabin
Lilian Giuon

Lisa Mitchener
Lisa Warshaw
Lourdes Welch
LR London
Marcie Adam
Margarita Guzman
Maria Anaya
Maria Eseobar
Mary Lorden
Matilde Sanchez
Michele Gessner
Neeka Johnson
Nichole Jones
Norma Diaz
Patricia Martinez
Roger Ramsay
Rosalina Rios
Rufina Lopez
Sanja Kaleuc
Silvia Perez
Socorro Gaeta
Tatiana Valencia
William Gastelum
Xochiel Ortiz
Yu Jung Choi
Fred Alimbeyao
Luis Cabrales
Darek Leiner
Joe Keoughan
Karen Pope
Kathy Moore
Karen Shoop
Michael W. Evans
Robert Lindsay
Ray Suhler
Beth Nelson
Will Yeager
Dinda Evans
Elena Perez-Davis
Ted Baer
Louise Johnson
Rayline Dean
Les Robert Dean
Williams Briggs, Jr.
Charlene Chauvaux
Jeff Lewis

Lara Abrams-Melman
Danny DeTora
Anai Abarra
James Denison
Robert Lassiter and Family
Ruthie Seroussi
Natashja Dewolfe
Julie Owen
Flynn Gourley
Susan Gill
Jane Langley
Ian Noah
Jack Wilson
Kathryn Hargreaves
Thomas Conroy
Janet Lassman
William Hsu
Linda Weiner
Cassandra Gomez
Mark Stout
Candice Kim
Laura Fultz
Sarah Sharpe
Lisa Warshaw
Caleb L
Luis Olmedo
Anna Bellin
Monica McKey
Mark Reback
James J. Provenzano
G Lincoln
Peter Klosterman
Heidi Sanborn
Henry Wang
Lena Tong
Tony Sourmany
Will Yeager
Michael Evans
Jason Bowman
Yuko Nakajima
Big Daddy
Randall Tyers
Michael Toobert
Brian and Rita Cohen
Stacy Thompson

Comments Received During the 15-day Public Comment Period

<u>Abbreviation</u>	<u>Commenter</u>
3GI	Jeremy Owens 3 Generations Improvements Written testimony: August 21, 2008
ABP	Mike Flanagan President Advantage Building Products Written testimony: August 19, 2008
CSPA-4	D. Douglas Fratz Vice President, Scientific & Technical Affairs Joseph T. Yost Director, Strategic Issues Advocacy Consumer Specialty Products Association Written testimony: August 25, 2008
DARCO-2	Darlene Coe DARCO Sales Written testimony: August 26, 2008
VDI	Richard Arnett Vinyl Designs Inc. Written testimony: August 26, 2008

A. 45-DAY COMMENTS

1. General Comments

- A-1. Comment:** I'm here to support the Board proposal as written. There are a few categories that have very technology-forcing limits, and we plan on working very closely with the staff to make sure that all the information gets across to them and that these products remain viable. [NAA-2]
- A-2. Comment:** We support the staff recommendation on the proposed limits that are before you. [SCAQMD-2]
- A-3. Comment:** We support the comments from the rest of the industry folks. [CRC]
- A-4. Comment:** I urge you to adopt the strongest possible regulation today. [ALA]
- A-5. Comment:** We do support the staff proposal. [Sierra]
- A-6. Comment:** We support the staff recommendations. [SherWill]
- A-7. Comment:** As a consumer and concerned citizen, I urge the California Air Resources Board to adopt tougher regulations on consumer products. [CCA/tr]
- A-8. Comment:** We're supportive overall of the staff proposal. [CCA-2]
- A-9. Comment:** We support the proposed amendment to the Regulation for Reducing Emissions from Consumer Products. [Falcon]

Agency Response to Comments A-1 through A-9: The Board approved staff's proposal with staff's suggested modifications.

- A-10. Comment:** The new VOC limits and proposed provisions in the ARB staff proposal present a very serious and costly formulating and marketing challenge. The Consumer Specialty Products Association (CSPA) has agreed to meet the technical challenges necessary to comply with most of these stringent VOC limits proposed by the staff. [CSPA-3]

Agency Response: Comment noted. Staff agrees there will be costs associated with reformulation and marketing. We also believe that compliance with all volatile organic compound (VOC) limits is achievable in the timeframes provided.

A-11. Comment: We are very pleased that staff included language redefining dilutable products (pg. ES-13) in spray bottles. Dilutable products bottled in containers that appear to be for immediate use should be required to reduce their VOC limits.

We want to use this opportunity to encourage CARB to also pay attention to other products designed to be diluted. It is very important that we assume that not all consumers follow diluting instructions to the letter. Therefore, in an effort to continue identifying emissions reductions alternatives, CARB should account for the potential emissions of other consumer products that should be diluted. [CCA, et al.]

Agency Response: The Board approved staff's proposal related to products designed to be diluted. This provision is contained in section 94509(b)(4). It applies to all products sold in pump spray bottles that are designed to be diluted and are subject to the VOC limit specified in section 94509(a). There is no reason to account for other consumer products that are to be diluted because the adopted language applies to the universe of consumer products regulated by ARB.

A-12. Comment: We are very supportive of staff's efforts to start looking at global warming emissions from consumer products. Many consumer products and their ingredients contribute directly and indirectly to the GHG emissions. We want to encourage this agency to think about the possibility of addressing those products and or their ingredients and make California the first State that officially takes steps to reduce our Global Warming foot print. [CCA, et al.]

Agency Response: The Board approved staff's proposal related to reducing the use of greenhouse gases in Pressurized Gas Duster products.

A-13. Comment: While Solvents Industry Group does not dispute the potential benefits to the ozone associated with a reduction in volatile organic compounds (VOCs), we believe that California can more effectively and efficiently meet CARB's emission reduction targets by focusing on VOC reactivity instead of percentage mass-based limitation. [The commenter provides additional information to support their contention that reactivity-based standards are appropriate from a technical standpoint and that there is both a regulatory and policy framework to support reactivity-based standards.] [ACC]

Agency Response: Staff agrees that reducing VOCs results in reductions in ozone concentrations. As to whether a reactivity-based or mass-based approach would provide a more effective and

efficient emission reduction, staff routinely evaluates each category proposed for regulation to determine which approach provides a greater overall reduction. For the categories that are the subject of this rulemaking, staff determined that the mass-based approach provided a more feasible regulatory strategy. Therefore, the mass-based approach was proposed by staff and approved by the Board. We agree that reactivity-based standards are appropriate in some instances. As noted by the commenter, ARB has already adopted an aerosol coatings regulation that limits the reactivity rather than the mass of the VOCs used.

- A-14. Comment:** CSPA fully supports the proposed addition of ethoxy-nonafluorobutane (HFE 7200) to the list of compounds excluded from the definition of “Volatile Organic Compound.” This chemical is needed for use in some of the products currently subject to VOC limits. As we noted in our comments submitted on November 30, 2007, on the Draft ARB Staff Report on “Environmental Impact Assessment of Selected Halogenated Compounds,” CSPA also believes that several other of the halogenated solvents that have petitioned for exemption as negligibly reactive should also be considered for exemption, and urges ARB to consider such exemptions in future rulemakings.

We also continue to support the exemption of t-butyl acetate [TBAC], a solvent that has likewise been clearly demonstrated to exhibit negligible photochemical reactivity, and could play a valuable role in VOC reductions for some consumer products. [CSPA-1]

Agency Response: The Board approved the exemption of HFE 7200 from the definition of VOC. Staff does not intend to propose VOC exemptions for the other halogenated compounds that are the subject of the report titled “Environmental Impact Assessment of Selected Halogenated Chemicals.” As described in the report, staff found that exempting any of the other halogenated compounds could result in adverse environmental impacts. Although not part of this rulemaking, staff is currently evaluating whether an exemption for TBAC is appropriate.

- A-15. Comment:** CARB and OEHHA’s objection in 2001 was that there was insufficient toxicological information data to properly assess the potential risk of exempting tert-butyl acetate (TBAC). Nonetheless, CARB staff asked OEHHA to estimate a theoretical cancer risk for humans based on chronic data for its TBA metabolite. The OEHHA analysis was published in 2004 and its conclusions were sharply criticized by leading experts in carcinogenicity. To date, the OEHHA analysis has not been validated by the Carcinogen Identification Committee and neither tert-butyl alcohol (TBA), nor TBAC, has been listed as a potential carcinogen in California or

elsewhere. In 2007, we provided OEHHA and CARB with the results of additional toxicology studies and expert opinions that confirm that TBAC and TBA are not genotoxic and are unlikely to be carcinogenic to humans. These new studies have still not been reviewed by OEHHA.

CARB staff has apparently not done what it said it would do, which is to evaluate TBAC use in consumer product categories likely to use it. These product categories include adhesives, caulks, and sealants, automotive wax/polish/sealant/glaze, brake, carburetor, and air intake cleaners, engine degreasers, paint strippers and graffiti removers, silicone based lubricants, and aerosol undercoatings. TBAC is unlikely to be used in household or personal care products, with the possible exception of nail polish and removers, because of its strong odor and flammability. It is unfortunate that CARB staff continues to focus on OEHHA's speculative concerns instead of the significant and tangible health and environmental benefits that will result when TBAC is exempted. OEHHA's concerns about TBAC's potential chronic toxicity are also of questionable relevance to non-occupational use of consumer products. There is still an urgent need for safer and effective consumer products that do not contribute to a serious ozone problem in California. In many of the product categories for which CARB is proposing stricter VOC content limits, VOC-exempt. TBAC is the answer to that need. [Lyondell]

Agency Response: Although this comment is not directed at the proposed amendments, for completeness staff responds as follows: Staff is currently evaluating whether a VOC exemption for TBAC is appropriate within the Consumer Products Regulation.

A-16. Comment: Please note on page 4 of regulation, the use of the name American Society for Testing and Materials is incorrect. Since 2001, the official name of our standards organization has been "ASTM International" and should be referenced accordingly.

Any information that is referenced from these documents should be updated accordingly in order to reflect the most current standard and information. ASTM International's standards change frequently. It is more effective to cite the ASTM standard without a date or provide some language to insure the use of the most current version. [ASTM]

Agency Response: As to changing the definition for 'ASTM' in section 94508(a), staff agrees and will propose a modification to the definition in a subsequent rulemaking. As for the references to the ASTM standards, staff references the most recent standards we have been able to review, and determine that those methods are appropriate for our work. Because ASTM International frequently changes their standards, it is not practical, or necessary, for ARB to

constantly make changes to the regulations just to update the ASTM International standards. To insure that those subject to the requirements of the regulation understand how the regulation is enforced it is necessary to date the ASTM method used. The Office of Administrative Law also requires that a specific date be listed for each referenced test method.

A-17. Comment: We support the decision to withdraw the “Not for Retail Sale” definition. This is a very complicated term to define with far-reaching implications. More time is needed to work on this issue. [NAA-1; CSPA-1; CSPA-2]

Agency Response: We agree. At the hearing, staff proposed, and the Board approved, a modification to delete the proposed definition. Staff determined it may be more appropriate to explain the concept of “Not for Retail Sale” in one of our routine enforcement advisories.

A-18. Comment: CSPA believes that the best way to remove any potential ambiguity as to whether the ARB’s regulatory provisions apply to specific products would be to clarify the definitions for these product categories. We believe that the following two definitions would result in clear demarcations for the products currently considered by ARB to be subject to the applicable VOC limits.

(68) “General Purpose Degreaser” means any product labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. “General Purpose Degreaser” does not include “Engine Degreaser,” “General Purpose Cleaner,” “Adhesive Remover,” “Electronic Cleaner,” “Electrical Cleaner,” “Energized Electrical Cleaner,” “Metal Polish/Cleanser,” products used exclusively in “solvent cleaning tanks or related equipment,” ***or products that are sold exclusively (directly and/or by distributors) for use in establishments which manufacture or construct goods or commodities; and labeled for manufacturer use only.*** “Solvent cleaning tanks or related equipment” includes, but is not limited to, cold cleaners, vapor degreasers, conveyORIZED degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container. ***“General Purpose Degreaser” includes products sold in retail outlets or wholesale locations to nonmanufacturing consumers.***

(89) “Lubricant” means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or

immovable parts or mechanisms. “Lubricant” does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two cycle oils or other products designed to be added to fuels; products for use on the human body or animals or **products that are sold exclusively (directly and/or by distributors) for use in establishments which manufacture or construct goods or commodities, and labeled for manufacturer use only.** “Lubricant” includes products sold in retail outlets or wholesale locations to non-manufacturing consumers.

These changes would provide a very clear demarcation between what products are subject to this Consumer Product Regulation and we urge ARB to adopt this approach to making this important clarification.

In addition, we believe that ARB should consider making this clarification as it applies to the other product categories that may include some manufacturer-use-only products outside of the scope of “Consumer Products” as it is defined in this regulation to include Institutional Products” or “Institutional and Industrial Products.” This could be accomplished by revising the definition for Institutional Products to read as follows:

“Institutional Product” or “Industrial and Institutional (I&I) Product” means a consumer product that is designed for use in the maintenance or operation of an establishment that: (A) manufactures, transports, or sells goods or commodities, or provides services for profit; or (B) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. “Establishments” include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. “Institutional Product” does not include household products and **products that are sold exclusively (directly and/or by distributors) for use in establishments which manufacture or construct goods or commodities, and labeled for manufacturer use only.** **“Institutional Product” includes products sold in retail outlets or wholesale locations to non-manufacturing consumers.**

In conclusion, CSPA believes that these narrowly-tailored revisions will eliminate any potential ambiguity as to the applicability of the ARB’s regulatory standards. Moreover, the revisions will promote efforts by the ARB Staff to restrict the sale of unregulated products to consumers.
[CSPA-1]

Agency Response: Staff disagrees with the comment. Staff believes the current product category definitions are sufficiently clear. In addition, staff believes the proposed language suggested by the commenter contains ambiguous terms that will impede clarity rather than promote it. However, as always, staff is open to continuing dialogue with all stakeholders to insure regulatory clarity.

A-19. Comment: This has been a somewhat difficult rulemaking. Each rulemaking has been a little bit more difficult than the last in many aspects. But we are meeting the -- or being able to commit to meet these new challenges because of the excellent work of your staff over the last nine months. We hope that all of these new limits will prove feasible for our members and our products. But I can tell you from a long experience that each rulemaking and each new standard is becoming more difficult and less cost effective in our contributions towards clean air. According to staff estimates, this rulemaking will cost our industry \$260 million, while providing just under six tons of reductions in VOCs per day. Many of these new limits will require dozens of products to be reformulated in order to get under 200 pounds a day of reduction statewide. One new limit will require 52 products to be reformulated in order to obtain a hundred pounds a day in VOC reductions. The staff has acknowledged in the staff reports we need to find new innovative reduction strategies for consumer products in the long term. Our industry is pledged to contributing in any way we can towards clean air here in California and also nationwide. But command and control regulations are becoming more and more difficult. The setting of new standards across broad categories is going to eventually lead to infeasible limits if it hasn't done so already. We've sponsored many scientific studies over the last 20 years just to look at ozone attainment and ozone attainment strategies. The very low impact of our VOCs is well established in those studies. And the reactivity -- the very low reactivity of our VOCs means they are one-fifth as much ozone impact as the highest reactivity sources. NOx reductions are five times more effective in ozone reductions per weight than VOC reductions. The \$260 million that we're pledging to invest today probably could be used elsewhere to much better effect, with much higher contributions to ozone reduction; much higher contributions in addition to particulate matter reductions and to global warming. [CSPA-2]

Agency Response: The commenter does not disagree that VOC emission reductions will help reduce ozone, but suggests that it might be better to regulate nitrogen oxide (NOx) or other pollutants instead of VOCs. We do not agree. VOC emissions reductions -- in addition to NOx emission reductions -- are still necessary to attain federal and state ozone standards as expeditiously as possible.

A-20. Comment: According to your staff's own estimates, after SIP measures are implemented, 2010 VOC emissions from consumer products will be approximately 220 to 235 tons per day (tpd). Additionally, consumer products will be the second largest source category of VOC emissions in 2010 (tied with trucks and buses), and in 2020 these products will be the leading source of VOC emissions. Unfortunately, the current version of the Consumer Products Regulation will reduce VOCs by just 1.7 tpd in 2010, less than one percent of total expected emissions. Yielding to industry demands, staff has suggested numerous delays in deadlines associated with emission reductions for different consumer product categories, such that full benefits associated with the 2008 proposal will not be achieved until 2015. [CCA, et al.]

Agency Response: Staff agrees that consumer products are an important source category and further reductions in VOC emissions are necessary. The amendments proposed in this rulemaking will reduce statewide VOC emissions by 5.8 tpd when fully effective in 2015. The effective dates are based on the commercial and technological feasibility of the limits, not industry demands, as suggested by the commenter.

2. Comments on Specific Categories

Astringent/Toner

A-21. Comment: A full range of non-over-the-counter (non-OTC) alcohol astringents and toners is necessary for certain affected individuals and groups. [Ghadijally-1]

Agency Response: We agree and believe the proposed limit allows a full range of non-OTC products with, and without ethanol, to remain available to address all needs. We also note that prescription drugs and those products subject to Food and Drug Administration (FDA) rules are not included in this category. If necessary, over-the-counter drug products and prescription products remain available to address specific needs.

A-22. Comment: I may have been misquoted and would like to set the record straight, "I have never stated in writing or verbally that a 25 percent alcohol level would be an acceptable cap in this category. In the course of our meetings and in my correspondence, I have stressed my strong medical opinion that higher levels of alcohol in products are needed by certain affected individuals and groups." [Ghadijally-2]

Agency Response: Staff acknowledges the comment.

A-23. Comment: We are very disappointed that staff increased the proposed VOC limit [for Astringent/Toner] from 10 percent to 35 percent. We would like to see a standardization of this industry. Many manufacturers of non-medicinal, non-FDA regulated astringent/toners already manufacture 10 percent VOC limit products. [CCA, et al.]

Agency Response: We agree that many products with 10 percent VOC are available and initially proposed a limit of 10 percent by weight. However, during further development of the proposal, and as explained in the ISOR, Chapter VI, page VI-64, staff learned that a 2:1 part water to alcohol ratio may be necessary for some products, designed for use on oily skin, to effectively dissolve sebum.

Therefore, the 35 percent VOC limit is necessary to ensure commercial and technological feasibility of this product category. See also the Agency Response to comment A-24.

A-24. Comment: We have come to agreement on virtually all except for one small, but important, category, and that's the astringent category. To remind you of the numbers, the staff's proposal is a 35 percent cap on the VOCs in these products. The principal VOCs of the products we're talking about are ethanol. And typically the products today are formulated at the higher end for the purpose served at about a 60 percent VOC limit. These are health benefit products. And the active ingredient is -- Dr. Balmes and Dr. Telles would know -- is the VOC in the product, the ethanol that cleans the pores and cleans the skin. We've had two prominent California dermatologists meet with staff to express their belief that the 35 percent limit is going to adversely affect many people with acne problems who can't -- in part, the people who can't spend money going to see those dermatologists because they don't either have the money or they don't have the health coverage, and they will be disproportionately impacted by these products not being available to them through the supermarket or drugstore at the levels currently proposed -- or currently produced. And as you all know, the acne is a principal problem, physical and psychological, for many young people, not just in California. The higher VOC level products that are currently produced are needed to address severe oily skin. The 35 percent limit is not going to be sufficient. We have suggested that at least the Board consider raising that number to 40 percent. And we would ask you to do that today, or put off this particular category until industry can do the definitive clinical study, which staff has agreed doesn't exist yet, in order to demonstrate the need for these higher level VOC products to meet the health needs of many, many Californians. What I think we're going to see is that people buy the products that will be remaining on the marketplace and simply have to use more of them, and we might end up in exactly the same place. This proposal as it stands in

the staff report gets you 220 pounds. Forty percent instead of would get you approximately – I think staff would agree - half of that, 110 pounds. So we're talking about a small amount of pounds, not tons, per day of emissions for a health benefit product that we think is necessary, the doctors who we've consulted with believe is necessary. We would ask you either to adjust the number to 40 or put this over until we can do the clinical study that would demonstrate the need. [PCPC; CSPA-1]

Agency Response: The Agency Response to comments A-21 and A-23 are incorporated herein. We believe the proposed limit maintains efficacy among the variety of products currently available and allows for a full range of products with all current label claims to be maintained. As stated in Chapter VI, Page VI-64 of the ISOR, a 2:1 part water to alcohol ratio may be necessary for some Astringent/Toner products to effectively dissolve sebum on oily skin. Based on this information, the proposed 35 percent VOC limit is the lowest technologically and commercially feasible VOC limit for these products. It should be noted that this rulemaking does not affect Astringents/Toners regulated by FDA or prescription drugs.

A-25. Comment: Food and Drug Branch cannot oppose the reduction of alcohol to 10% in non-medicated astringents/toners. [CEH]

Agency Response: Staff acknowledges the comment.

Carpet/Upholstery Cleaner

A-26. Comment: The Clorox Company supports staff's proposed limit of 5% for Aerosol forms of Carpet/Upholstery Cleaners, effective on December 31, 2010. [Clorox]

Agency Response: The Board approved staff's proposal of a five percent by weight VOC limit for aerosol Carpet/Upholstery Cleaner.

A-27. Comment: We do not support the limit for Aerosol Carpet/Upholstery Cleaner. The current limit is 7%; the proposed limit is 5%. We believe that a six percent VOC limit is more clearly technologically and commercially feasible for the aerosol Carpet/Upholstery Cleaner Category. [NAA-1; CSPA-1]

Agency Response: Staff disagrees with this comment. The complying market share data from the 2003 Survey, discussions with industry stakeholders, as well as staff's own research demonstrate that a five percent VOC limit is commercially and technologically feasible.

Fabric Softener – Single Use Dryer Product

A-28. Comment: We recommend that no regulatory action relating to this product category be taken. We remain concerned with setting a VOC limit for this category, and the possible consequences that this limit could have on VOCs and other potential air emissions. Recognizing that the VOCs present in these products are essentially all fragrance materials, we expect consumers to respond to decreased fragrance levels in dryer sheet products by using multiple sheets. That would lead to increased product use, offsetting ARB's projected reductions in VOC emissions from these products. Further, increased product consumption will create unintended air emissions over the life cycle of the products (i.e., increased greenhouse gas emissions from increased transportation) that run counter to ARB's overarching air quality goals. [SDA-1; CSPA-1]

Agency Response: We disagree. According to the 2003 Survey, the sales weighted average VOC content for this category is about 0.08 grams per sheet, with fragrance as the primary VOC ingredient. Of the 26 products reported in the 2003 Survey, only 6 products would need to be reformulated to comply with staff's proposal of 0.05 grams of VOC per use. These data indicate the limit to be commercially and technologically feasible in accordance with State law. Therefore, it is appropriate to propose a VOC limit for this category.

Staff does not believe that the proposal would significantly change consumer usage. Staff is not aware of any consumer usage studies that directly support the Soap and Detergent Association's (SDA) expectation regarding how consumers will respond to reduced fragrance products. SDA's contention is that the reformulated products will be perceived as inadequate because of reductions in fragrance, and implies that the consumer will essentially begin doubling the number of sheets per load of clothes dried. According to information provided by SDA, about 80 percent of consumers who use fabric softener sheets use one sheet or less per drying cycle. As the non-fragrance attributes of the products (softening and controlling static cling) will be unchanged, staff believes that it is highly unlikely that customers would want to double the cost of clothes drying by using double the amount of product.

Additionally, staff's proposal for a "grams of VOC per use" limit was designed to mitigate the potential for an increase in the size of the sheet substrate. In developing the proposal for these products, staff determined that establishing a "VOC percent by weight" limit could result in manufacturers using larger size sheets. This could

diminish emissions reductions and lead to increasing the solid waste stream. Therefore, the “grams of VOC per use” limit was proposed instead of a “VOC percent by weight” limit. Staff has no reason to believe that this limit will result in VOC and greenhouse gas emissions increases.

A-29. Comment: We respectfully disagree with ARB’s staff assessment that “no data were provided to support this claim” (Staff Report: Initial Statement of Reasons (ISOR), pages 83 and 84). Contrary to the staff’s report concluding that industry did not provide any data to support our position, the SDA and its members made numerous submissions and presentations to the ARB on this category (see list of SDA submissions and presentations enclosed, as well as documented in ISOR). We recommend that ARB staff amend their statement on pages 83 and 84 by replacing the noted sentence in the “Response” sections as follows: “Industry submitted data based on consumer studies to support the claim, but it is the opinion of the staff that the data submitted were insufficient.” [SDA-1]

Agency Response: Staff acknowledges and appreciates SDA submissions and presentations related to this category. In stating that “no data were provided to support this claim,” staff did not intend to imply that no information was provided by SDA and its members. Rather, this statement was intended to convey that we had not received information that directly supported SDA’s expectation that consumer usage would increase with use of reformulated products. While staff has no disagreement with recommended alternative language, the staff report has already been published and cannot now be changed.

A-30. Comment: We are very disappointed that staff increased VOC limits and compliance dates for several categories, most of which we believe could comply with more health-focused limits and shorter deadlines. The VOC limit for Fabric Softener – Single Use Dryer Product was increased from 0.05 percent to 0.1 percent. [CCA, et al.]

Agency Response: The commenter is incorrect. In developing our proposal for this category, staff first considered establishing a percent by weight VOC standard of 0.1 percent, but has never proposed a standard of 0.05 percent. After consulting with industry representatives, staff proposed, and at the hearing, the Board approved, a 0.05 grams of VOC per use limit including fragrance. The VOC emission reductions achieved are equivalent to setting a 2.6 percent by weight VOC limit including fragrance.

The limit was designed to mitigate the potential for adverse environmental impacts should manufacturers choose to increase the size of the sheet substrate to comply with a percent by weight limit. The proposed compliance date of December 31, 2010 was not changed. The commenter offers no data to support the claim that the limit could be “more health-focused” or achievable in a shorter compliance timeframe.

A-31. Comment: I do not want to see the upper limit for VOC’s for dryer sheets and fabric softeners doubled, or increased at all in fact. The present limits cause the impact of consumer use of these products to reach distances greater than 300 feet. [Ray]

Agency Response: Contrary to the view expressed in this comment, staff’s proposal results in decreasing emissions from the previously unregulated category of Fabric Softener – Single Use Dryer Product. The proposed limit of 0.05 grams of VOC per use limit would require some manufacturers to reduce the amount of VOC, mainly fragrance, used in the formulation of dryer-added fabric softener products. The estimated VOC emission reduction for this category is approximately 0.21 tpd by December 31, 2010.

A-32. Comment: There has been discussion that only 1 company makes these products [Fabric Softener – Single Use Dryer Product] and limiting the emissions would divulge trade secrets. That argument is illogical. Companies exist that can reformulate products such as those to provide the list of chemicals used in them. Unfortunately this is not widely known as of yet. Neither are the specific ingredients widely known. [Ray]

Agency Response: The commenter is incorrect related to companies manufacturing Fabric Softener – Single Use Dryer Product. According to the 2003 Survey, approximately 20 companies reported dryer-added fabric softener products. Staff provided the necessary data for the public to evaluate the proposal without compromising manufacturers’ confidential business information [see Chapter VI, pages VI-104 and VI-105 of staff report]. Based on these data, staff proposed, and the Board approved, a VOC limit which would reduce emissions by 0.21 tpd by December 31, 2010.

A-33. Comment: We have a concern about... fabric softener. It's a novel category, as was reflected in the way in which it's being regulated as a number of grams per sheet. We are concerned that because of that differential, there's going to be some confusion. The consumers have a tendency to use these products by number of sheets. And in the initial statement of reasons on Page 83 there's an attempt to address the issue

that perhaps consumers at lower VOC emissions will instead use multiple sheets instead of single sheets. It was noted within the Statement of Reasons that we had not brought forth data. And although the data's a little bit unusual when it's market research data, we did bring forth data that demonstrated that consumers do have a tendency when they don't find their clothes sufficiently freshened in the single cycle, that they'll use multiple sheets or return the clothing for a second cycle. ARB notes that the staff will use its periodic surveys to monitor product sales and take appropriate action if any unanticipated increased use is occurring. It is our concern that that might happen and it would take some time before the Board would have this drawn to their attention. So we do believe that this is a premature regulation, although we do see that the staff has worked with us to a significant extent.

If you should decide to implement the regulation in any case, we are concerned about the differential in the way in which fragrance is being addressed. It is an exception to the normal use where the manufacturers have an exemption for a certain amount of fragrance. And we would just like to make sure that there's sufficient training for some manufacturers who might not be aware or understand that it is a different category (fabric softener - single use dryer product). [SDA-2]

Agency Response: Staff disagrees that the regulation is premature and incorporates the Agency Response to comment 28 herein. We do not expect the consumer to be confused because it is unlikely that the use directions on the product will change. Consumers will use the product as they have always done. We acknowledge that the commenter provided market research data, however the data did not support the contention that more sheets would be used.

As is always done, staff will monitor product sales through periodic consumer products surveys, to ensure that unintended consequences of establishing the proposed VOC limit do not occur. Related to training, during development of the proposal, staff worked closely with stakeholders to ensure the proposal was understood. Conference calls were held to specifically explain the proposal to affected stakeholders and answer questions.

Fragrance is the primary ingredient that will be reduced to comply with the 0.05 grams VOC per use limit. The 0.05 grams of VOC per use limit provides emission reductions equivalent to setting a 2.6 percent by weight limit including fragrance (or a 0.6 percent by weight limit with application of the existing 2 percent fragrance exemption in section 94510(c) of the Consumer Products Regulation). However, because the proposed limit already includes

an allowance for up to 2 percent of fragrance, there is no need to provide the fragrance exemption for this category. Thus, in addition to the limit, staff proposed and the Board approved, amendments to section 94510(c) that specify that the fragrance exemption does not apply to Fabric Softener – Single Use Dryer Product. The VOC limit and modification to the fragrance exemption will become effective December 31, 2010, which should provide sufficient time for ARB staff to inform and educate manufacturers affected by this regulation, if needed.

Floor Maintenance Product

A-34. Comment: CSPA urges ARB to incorporate the following narrowly-tailed revision to the proposed definition.

Floor Maintenance Product means any product designed or labeled to restore, maintain, or enhance a previously applied floor finish. “Floor Maintenance Product” includes, but not limited to, products that are labeled as Spray Buff products or Floor Maintainers or Restorers. “Floor Maintenance Product” does not include floor polish products, products designed solely for the purpose of cleaning, or products designed specifically for use on marble floors, ***or coatings subject to architectural coatings regulations.***

This revision will make the definition for the newly regulated Maintenance Products consistent with the definition for the “Floor Polish or Wax” product category. [CSPA-1]

A-35. Comment: CSPA supports ARB’s Action to Clarify the Definition of the Term “Floor Maintenance Product.” The modification to the definition for this product category removes any potential ambiguity as to applicable regulatory limits. [CSPA-2]

Agency Response to Comments A-34 and A-35: Staff agrees and proposed revisions to the definition of Furniture Maintenance Product at the hearing. The proposed modifications were approved by the Board.

A-36. Comment: CSPA continues to believe that the ARB should provide additional time for manufacturers to reformulate Floor Maintenance Products. Specifically, CSPA believes that a 2012 effective date for the new VOC limit for this product category would provide a more reasonable and achievable schedule. [CSPA-1]

Agency Response: Staff disagrees that a 2012 effective date is necessary for this category. We believe the technology is available

for these products to be successfully reformulated by the proposed effective date of December 31, 2010. Data from the 2003 Survey for Floor Maintenance Products indicate a high complying market share at the proposed limit. This indicates that technology is readily available for successful reformulation in this time-frame.

Glass Cleaner

A-37. Comment: We support the ARB staff's proposal for aerosol Glass Cleaner of 10% VOC in 12/31/2012. [Stoner-1]

A-38. Comment: I'm here today to support staff's proposal for the aerosol glass cleaner category. The staff proposal is to reduce this product category to a 10 percent VOC limit. This reduction will not be easy for our company. Our customers expect a high quality product that provides strong cleaning and a transparent finished surface. Our company will spend resources reducing the VOC content while maintaining this high quality product. [Stoner-2; Plaze]

Agency Response to Comments A-37 and A-38: The Board approved staff's proposal for aerosol Glass Cleaner.

A-39. Comment: We are very disappointed that staff increased VOC limits and compliance dates for several categories, most of which we believe could comply with more health-focused limits and shorter deadlines. The VOC limit for Glass Cleaner increased from 8% to 10% and compliance dates increased from 2010 to 2012. [CCA, et al]

Agency Response: Prior to the release of the staff report, staff initially proposed a VOC limit of eight percent effective December 31, 2010. However, further technical discussions with stakeholders demonstrated that the proposal would not be technologically feasible by the proposed effective date.

Reformulated products, while effective, may have different attributes than the consumer is used to for some products. Because of this, test marketing prior to bringing the reformulated products to market may be required. For these reasons, staff believes more time for compliance is warranted.

In response to this technical information, the proposal in the staff report includes a 10 percent by weight VOC limit effective December 31, 2012. Staff did not propose further changes after publication of the staff report.

The commenter provided no data to support the claim that the limit could be “more health-focused” or achievable within a shorter compliance timeframe.

Motor Vehicle Wash

A-40. Comment: CSPA supports ARB’s action clarifying the applicability of the regulatory limit for the “Motor Vehicle Wash” product category. The modification to the Motor Vehicle Wash product category in the Table of Standards unambiguously conveys ARB’s intent that the stringent new VOC limit applies only to the nonaerosol form of this particular product category. [CSPA-2]

Agency Response: Subsequent to release of the staff report, staff received information indicating that aerosol Motor Vehicle Wash products were being sold in California. These products did not exist at the time survey data were collected. Therefore, to insure commercial and technological feasibility, for aerosol products, staff proposed a modification to clarify that the limit applies only to non-aerosol products.

The Board approved staff’s proposal with staff’s suggested modifications, including the proposal for Motor Vehicle Wash.

A-41. Comment: The current definition of “Motor Vehicle Wash” will ban our aerosol form of the product. [Meguiar’s; Plaze; NAA-1; CSPA-1]

Agency Response: Staff agrees with the comment. In response, at the Board hearing, staff proposed a modification to the original proposal such that no product forms are eliminated. The Agency Response to comment 40 is incorporated herein.

A-42. Comment: As currently drafted, the proposed definition for this product category would include wash and wax products, as well as products that are not diluted or rinsed off with water. It would therefore include all forms of spray and wipe products and would eliminate the aerosol form for motor vehicle cleaners. These products may not be common, but they can play an important role in water conservation by allowing automotive exteriors to be cleaned without the use of water. Therefore, CSPA recommends the following narrowly-tailored revision to the definition for this newly-regulated product category.

(99) “Motor Vehicle Wash” means a product designed ~~or~~ **to dilute with water and** labeled to wash, wash and wax, wash and shine, or wash and/or clean the exterior surface of motor vehicles. “Motor Vehicle Wash” includes, but is not limited to, products for use in

commercial, fleet, hand, and “drive through” car washes; commercial truck washing or large vehicle washing stations; vehicle dealers and repair shops as well as products intended for household consumer use. “Motor Vehicle Wash” does not include “Bug and Tar Remover,” “Glass Cleaner,” “Tire or Wheel Cleaner,” and products labeled for use exclusively on locomotives or aircraft. [CSPA-1]

Agency Response: The commenter is correct in that the definition includes “wash and wax” products as well as products that are not diluted prior to use (spray and wipe products). The proposed modification is not appropriate, however, because the 2003 Survey data demonstrate that products that do not require dilution are able to comply with the proposed limit. Staff also agrees that the definition would include aerosol products. However, aerosol product forms would not be eliminated because the Board approved a modification to specify that the VOC limit applies to non-aerosol products only.

Multi-purpose Lubricant

A-43. Comment: We are very disappointed that staff increased VOC limits and compliance dates for several categories, most of which we believe could comply with more health-focused limits and shorter deadlines. The compliance date for Multi-Purpose Lubricants moved from 2012 to 2013. [CCA, et al.]

Agency Response: The proposal in the staff report includes a limit of 25 percent by weight effective December 31, 2013 and a lower limit of 10 percent by weight effective December 31, 2015. Staff did not propose further modifications to the original proposal.

The commenter provided no data to support what would be considered a “more health-focused limit” or why a shorter compliance date would be feasible.

A-44. Comment: We've come here to support the CARB staff proposal for the multipurpose lubricant categories. [WD-40]

A-45. Comment: We supported the 25 percent VOC limit [for Multi-Purpose Lubricant] by 2013, even though we don't have any solution in hand. We don't know how we're going to do that. We believe in clean air and we'll do everything we can to support that. And even though we have shown science to the CARB staff and to some of you on the Board that clearly demonstrates that our product performance suffers when the VOC content drops, we're moving forward in good faith. WD-40's more than a lubricant.

It's a penetrant, it's a water displacer, it's a cleaner, it prevents corrosion and rust. We need the time to develop and successfully introduce a WD-40 that works as good or better than the current product and also meets, beats all CARB VOC goals. And we -- I want you to know that the WD-40 brand represents 50 percent of our total company sales in the United States and 70 percent of our global sales. We're betting the brand and the company on success. And we want you to join us in that endeavor by supporting the CARB staff proposal for multipurpose lubricants. [WD-40]

A-46. Comment: We support the limits and effective dates for the Multi-purpose Lubricants and Penetrants category. [Radiator-1]

A-47. Comment: We are very pleased and supportive, however, that staff added a new VOC limit of 10% to be met in 2015 - one positive improvement we support. [CCA, et al.]

Agency Response to Comments A-44 through A-47: The Board approved staff's proposal to reduce the VOC content of Multi-Purpose Lubricant products.

A-48. Comment: CSPA wants to ensure that the record for this rulemaking clearly reflects that we continue to have very significant concerns about the ARB Staff's proposal to establish a second-tier technology-forcing 10 percent VOC limit that will take effect on December 31, 2015. Since CSPA members are willing to undertake this challenge, we do not oppose the proposed second-tier VOC limit. [CSPA-1]

Agency Response: Comment noted. Staff agrees there will be costs associated with reformulation and marketing. We also believe that compliance with all VOC limits is achievable in the timeframes provided.

A-49. Comment: CSPA has significant concerns about the proposed second tier technology-forcing VOC limit for the Multi-purpose Lubricant products category. There is no known nor reasonably foreseeable technology that ensures that these products' current multiple functions can be maintained while achieving compliance with a proposed second tier limit. Many CSPA-member companies have yet to identify feasible product technologies to meet these new VOC limits. Nonetheless, CSPA-member companies are committing to exercise their best good faith efforts to push the limits of current technologies in developing a new product technology and formulation in hopes that they will prove to be commercially viable products. To be clear, however, this commitment entails taking necessary risk with brand names that have been built over many years. Therefore, we request that ARB staff commit to work with us to reevaluate these

limits in the future if they prove to be technologically and commercially infeasible. [CSPA-3]

Agency Response: Staff acknowledges these comments and is committed to working with stakeholders as products are reformulated to comply. Based on research and analysis, staff believes both limits to be feasible in the timeframes provided. In light of concerns, however, the approved amendments require that responsible parties must submit written updates on research and development efforts to ARB by March 31, 2012 and another on March 31, 2014. These updates [see section 94513(f)] will allow staff to monitor progress on manufacturers' efforts to comply.

Odor Remover/Eliminator

A-50. Comment: CSPA worked cooperatively with ARB staff to assure that this new category definition [Odor Remover/Eliminator] and VOC limit do not re-regulate currently regulated products, either directly or through Most Restrictive Limit provisions. [CSPA-1]

Agency Response: Comment noted. Staff's proposal does not re-regulate currently regulated products.

A-51. Comment: We are very disappointed that staff increased VOC limits and compliance dates for several categories, most of which we believe could comply with more health-focused limits and shorter deadlines. The VOC limits for Odor Remover/Eliminator increased from 0.1% to 6% for non-aerosol, and 25% for aerosol; compliance dates increased from 2012 to 2013. [CCA, et al.]

A-52. Comment: Another concern has to do with the increased VOC limits and compliance dates for several categories listed in this draft. For example, when we talk about odor removers, the issue that staff had originally intended to set a VOC limit at 0.1 percent and came back with a proposal with a 6 percent VOC limit for non-aerosol odor removers and a 25 percent for aerosol odor removers and a compliance date moved from 2012 to 2013. [CCA-1]

Agency Response to Comments A-51 and A-52: Related to the non-aerosol VOC limit proposal, the commenter is correct. During the course of our investigations into the non-aerosol product form, staff became aware of patents covering these and similar products. In order to ensure that manufacturers would not be faced with potential patent infringement while reformulating to comply with the 0.1 percent limit, staff increased the proposed limit to 6 percent by

weight VOC. A VOC limit of six percent by weight is achievable without infringing on any patents of which we are aware.

Related to the aerosol product, ARB staff's original proposal was not increased as the commenter suggests. In the staff report, staff proposed the 25 percent limit which was approved by the Board.

The commenter incorrectly states the effective date for the limits. A December 31, 2010 compliance date for both aerosol and non-aerosol products was initially proposed by staff, and this same date was subsequently approved by the Board.

We also note that these commenters provided no data to support the feasibility of a limit that would be "more health-focused" or achievable within a shorter timeframe.

A-53. Comment: In addition to increasing the VOC limits and compliance dates for [Odor Remover/Eliminator], CARB staff does not want to disclose the total amount of 2008 VOC emissions created by ALL the aerosol odor removers/eliminators in the market arguing possible damage to "confidentiality." It is important that CARB staff finds a way to inform the public about the amount of emissions created by this industry. [CCA, et al.]

A-54. Comment: Failing to release generic statistics on releases of VOCs or toxins into the air because of patent issues isn't really a valid argument, although it is used in the food industry as well as the various chemicals industries. (That's why foods can say "natural flavors" and have in it any ingredient with a primary purpose of only adding flavor.) Please note: any of these products can be de formulated by a laboratory in Florida which specializes in deconstructing fragrance formulae for the industry. The claim that a patent might be at risk is therefore invalid. Releasing the total pounds of emissions no more reveals the exact formula than does de formulation by gas chromatography. [CCA, et al.]

Agency Response to Comments A-53 and A-54: ARB has disclosed as much information as possible without disclosing confidential information. Aggregate emissions data for the aerosol Odor Remover/Eliminator category was included in the staff report, in such a way as to avoid disclosing confidential company sales and product formulation information, while providing general information. Contrary to what the commenter suggests, data were not withheld due to "patent" considerations.

Penetrant

A-55. Comment: Radiator Specialty also supports the provision to allow the continued manufacture of Penetrants that are non-flammable. [Radiator-1]

Agency Response: The Board approved staff's proposal for non-flammable Penetrants, which should ensure that products designed for use on energized equipment can continue to be used safely.

A-56. Comment: Blaster supports the staff proposal on Penetrants of 25% VOC limit effective 12/31/2013. [Blaster-1]

A-57. Comment: I'm here today to support the staff's proposal concerning penetrants. Currently the 25 percent VOC limit is technology forcing and will take a significant reformulation effort. [Blaster-2]

Agency Response to Comments A-56 and A-57: At the hearing, the Board approved staff's proposal for Penetrants.

A-58. Comment: We are very disappointed that staff increased VOC limits and compliance dates for several categories, most of which we believe could comply with more health-focused limits and shorter deadlines. Compliance dates for Penetrants increased from 2012 to 2013. Additionally, we feel that technology allows and staff could have set this category's limit at 10%, instead of the 25% VOC limit suggested. [CCA, et al.]

Agency Response: During the development of the regulation, staff initially proposed an effective date of December 31, 2012. In response, stakeholders provided technical information demonstrating the need for an additional year to comply. Therefore, the proposal contained in the staff report specifies an effective date of December 31, 2013.

Related to proposing a lower VOC limit, the commenter provided no data to support the feasibility of a 10 percent limit. A 25 percent by weight VOC limit was proposed because staff determined this was the lowest commercially and technologically feasible limit at this time.

Personal Fragrance Product

A-59. Comment: In conversations with the staff, we support the staff proposal to change the Personal Fragrance definition. The definition is being modified to provide clarity that personal hygiene products are not included into this category. This is consistent with the 2001 survey definition for

personal hygiene products. This change will provide clarity for the manufacturer as well as the ARB. [Fleet; NAA-1]

Agency Response: The Board approved staff's proposal to modify the definition of Personal Fragrance Product.

A-60. Comment: We are very disappointed that staff increased VOC limits and compliance dates for several categories, most of which we believe could comply with more health-focused limits and shorter deadlines. Compliance dates for Personal Fragrance Products increased from 2010 to 2014. Personal fragrances are a large emitter of VOCs in the consumer products category (10.77 tpd), thus we are pleased staff will remove grandfather clauses from all products with 20% or less fragrance. However, staff should increase the scope of products whose grandfather clause will be removed and strengthen the VOC limits suggested—currently at 25%. [CCA, et al.]

Agency Response: This rulemaking removed exemptions from applicable VOC limits (the Grandfather clause), effective December 31, 2014, for one subcategory of Personal Fragrance Product: products with 20 percent or less fragrance. Effective December 31, 2014, all personal fragrance products with 20 percent or less fragrance will be subject to the same VOC limit, namely 75 percent by weight. Staff had considered an earlier effective date of December 31, 2010, but after input from affected industry, proposed a December 31, 2014, effective date. This date allows responsible parties sufficient time to reformulate, test, and market over 400 affected products. Staff's proposal achieves a reduction of VOC emissions of more than 0.4 tpd. Contrary to what the commenter suggests, there is no current limit of 25 percent VOC for Personal Fragrance Product.

Staff considered but did not propose changes to exemptions (the grandfather clause) for the Personal Fragrance Products with more than 20 percent fragrance. This decision recognized the technical and resource challenge for responsible parties and high cost relative to limited additional emission reductions. If the exemptions for products with more than 20 percent fragrance were eliminated, about 300 products would be affected but the additional VOC emissions reduction would be less than 0.1 tpd.

Pressurized Gas Duster

A-61. Comment: We support the inclusion of the provision for "Pressurized Gas Dusters" that allows for the continued manufacture and use of these

products around energized circuits and open flames. [Techspray; NAA-1; CSPA-1]

Agency Response: To ensure that these products can continue to be used safely, the Board approved the staff's proposal related to Pressurized Gas Duster products designed for use on energized circuits.

A-62. Comment: CSPA members are willing to accept the challenge of reformulating our products to meet the proposed global warming potential [limit] for pressurized gas dusters. [CSPA-1; CSPA-3]

A-63. Comment: We are in support of the new requirements for Pressurized Gas Dusters to contain a propellant compound that has a Global Warming Potential (GWP) value of 150 or less. [Falcon]

Agency Response to Comments A-62 and A-63: The Board approved the staff's proposal including the requirements for Pressurized Gas Duster products.

A-64. Comment: CSPA supports the definition for "Global Warming Potential (GWP)" and "Global Warming Potential Value (GWP Value)" for the purpose of limiting the GWP of Pressurized Gas Duster. The choice to define GWP Value through descriptive reference to some of the numbers contained in two tables in a massive United Nations report does, however, presents some practical difficulties for companies seeking to comply with the standard being set for these products. We therefore request that, if the specific chemicals and GWP Values cannot be expressly included in the regulation, ARB staff issue a compliance advisory that clearly provides the GWP Values of all of the compounds that must be used in complying with this rule. [CSPA-1]

Agency Response: In the regulation staff incorporated by reference two tables within the 1995 Second Assessment Report (SAR) which is contained in "Climate Change 2007: The Physical Sciences Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change." Within this document, Tables 2.14 and 2.15 are easily found. The document is available on the internet. The document was also made available in the context of the subject rulemaking in the manner specified in Government Code section 11364.7 and is accessible from ARB's website.

These tables are of limited interest to the consumer products industry and will only be used by a few manufacturers of Pressurized Gas Duster products. Therefore these two tables were

incorporated by reference because it would be cumbersome and unnecessary to add additional volume to an already complex regulation. It has been a longstanding and accepted practice for ARB to incorporate by reference the test methods used for compliance with the regulation. Stakeholders are accustomed to this format. Incorporating these tables by reference is an analogous situation.

In addition, prior to the effective date of the limit, staff committed to develop and distribute an advisory for manufacturers of Pressurized Gas Duster products, and any other interested stakeholder, that lists specific chemicals and their applicable GWP Values.

A-65. Comment: We have concerns regarding some aspects of this definition [Pressurized Gas Duster] that may make it not appropriate when and if other product categories are subjected to GWP limits. In particular, we are concerned about the requirement that the GWP value for all chemicals or compounds not assigned a specific value in the United Nations report is designated to be equal to the GWP limit for the applicable product category. While this may be a sound practical approach for the Pressurized Gas Duster category, it could be inappropriate for some future categories and formulations. We urge that options remain open to refine this definition in any future rulemaking seeking to establish further GWP limits for consumer products. [CSPA-2]

Agency Response: Staff acknowledges the comment. As part of ARB's rulemaking process, staff routinely reviews the existing regulatory provisions in order to determine whether or not amendments are appropriate and necessary. This will be done for future rulemakings as requested by the commenter.

A-66. Comment: Industry urges ARB to consider extending the sell-through period for Pressurized Gas Dusters from one-year to three-years. [CSPA-1]

Agency Response: Staff does not believe an extension of the sell-through period is necessary. Because early reductions are needed to slow climate change, the reductions must occur expeditiously. A faster air quality benefit will be realized by limiting the sell-through to one year. The California Global Warming Solutions Act of 2006, by specifying adoption of Discrete Early Action Measures in Health and Safety Code section 38560, shows that the California Legislature intended progress toward reducing greenhouse gases (GHGs) be made as quickly as possible. The reduction of GHGs from consumer products is a Discrete Early

Action Measure, and the one-year sell-through period is necessary to expeditiously achieve GHG emission reductions.

We believe that the vast majority of products manufactured prior to the effective date of the emission limit will clear shelves within a year such that a one-year sell-through is adequate.

Sealant or Caulking Compound

A-67. Comment: We can support the removal of “threaded pipe sealants and gasket makers” from the “Sealant or Caulking Compound” definition. As originally written this category would have banned an aerosol form of one of our products. We appreciate the staff review of this issue and their willingness to modify the regulation. [FSC; NAA-1; CSPA-1]

Agency Response: The Board approved the staff’s proposal for Sealant or Caulking Compound products with the modifications suggested at the hearing.

A-68. Comment: We support the VOC limit of 1.5% for Non-chemically Curing Sealant or Caulking Compound effective in 12/31/10 for water based materials. This limit is needed to ensure that these types of products remain effective in all types of interior and exterior use. The 1.5% will provide an allowance for the minor VOCs brought in by the many components going into the products. [Henkel]

Agency Response: The Board approved staff’s proposal related to the limit for Non-chemically Curing Sealant or Caulking Compound products.

A-69. Comment: We request that paintable exterior sealants with immediate water resistance based on synthetic rubber and hydrocarbon resin also to be set at 3% just like the reactive products they directly compete against. [Henkel]

A-70. Comment: In the past construction companies I currently work with were able to use a sealant containing a petroleum solvent. This sealant allows them to complete their outdoor work in all 12 months of the year, whether wet or dry or damp. Now, we are told that we can’t buy this type of sealant. That California has outlawed them. Why? We all need to work in the winter. Rubber sealants with a petroleum solvent are the best all season sealants for outdoor work. [DARCO; JRW]

A-71. Comment: It was brought to my attention that the State of California is considering banning the use of rubber sealants that contain petroleum solvents. We are a Rain Gutter company that works with painted

materials in all seasons of the year. We have tried many different sealants and have found that the sealants you are considering to be the most effective as the others just will not stick to surfaces that are not completely dry. Please do not pass such a regulation for Contractors until a time when a proven viable alternative is developed. [YG]

Agency Response to Comments A-69 through A-71: Staff's proposal does not ban a product type, but rather limits the amount of VOC solvent the products can contain. Staff believes that proposed VOC standards for non-aerosol Non-Chemically Curing and Chemically Curing Sealant or Caulking Compound products will accommodate a wide range of applications, including work performed by professional contractors. Of the 296 products reported in the 2003 Survey that comply with the proposed VOC limits many products claim to perform well under extreme weather conditions and can be applied to a varied range of substrates both indoors and outdoors. Product labels for complying products state that the products are effective for various types of construction, remodeling and maintenance purposes of houses and other structures, providing protection against the weather and other elements. A number of these complying products are paintable and have high flexibility. Thus the needs of contractors and do-it-yourself consumers can be met. Staff has worked with a number of major companies and associations who have provided input and supported the development of the proposed limits.

A-72. Comment: In regards to the new limit and revised labeling requirements for Sealant or Caulking Compound, we recommend that ARB clarify that the new labeling requirements become effective on the same date as the new VOC limit. [CSPA-1]

Agency Response: Staff agrees. At the hearing, staff proposed, and the Board approved, a modification to the Administrative Requirements section [section 94512(d)] of the regulation to specify the effective date of the labeling requirement for Sealant or Caulking Compound products.

Windshield Water Repellant

A-73. Comment: CSPA continues to believe that the ARB should provide additional time for manufacturers to reformulate Windshield Water Repellent Products. Specifically, CSPA believes that a 2012 effective date for the new VOC limit for this product category would provide a more reasonable and achievable schedule. [CSPA-1]

Agency Response: Staff disagrees that a 2012 effective date is necessary for this category. The technology is available for these products to be successfully reformulated by the proposed effective date of December 31, 2010. We also note that in discussions with stakeholders, information was provided that indicated that the proposed limit for Windshield Water Repellent could be met by 2010.

3. Other Comments

A-74. Comment: Staff has already included language to regulate methylene chloride from several consumer products. But we want to encourage you to direct staff to also include paint strippers in this group of consumer products. According to these agencies' own surveys and research, methylene chloride tonnage in paint strippers as of 2006 was approximately 1.9 tpd. When you multiply it by 365, that gives you approximately 693 tons of methylene chloride a year. In addition to that, we have included information about research available for alternatives for methylene chloride in paint strippers. [CCA-1]

Agency Response: This comment is not directed at the proposed amendments. However, staff is committed to return to the Board as soon as possible to propose additional requirements for these products if it is found to be commercially and technologically feasible.

A-75. Comment: Finally, I want to mention one specific concern that relates to an approach that ARB's using and a potential hazard with it and the reactivity approach to regulating consumer products. There's the potential for companies to bring forward alternatives that are in fact more toxic -- maybe lower VOC but more toxic than the product that's on the market today. We do not want to change out one problematic product with another problematic product. [CCA-2]

Agency Response: Staff did not propose reactivity-based standards for the products that are the subject of this rulemaking.

A-76. Comment: We're especially appreciative of the toxic reductions. Chlorinated solvents are nasty compounds, and we should move away from them everywhere in our society as quickly as possible. [CCA-2]

A-77. Comment: I encourage you to strongly reduce the harmful toxics found in cleaning and other consumer products. By regulating and reducing these chemicals from consumer products, the State of California will set another precedent in protecting the health of families and workers. [CCA]tr]

A-78. Comment: And we also want to note that we certainly support the prohibition of toxics in these consumer product categories. I think that's a very important strategy for you to pursue. [ALA]

Agency Response to Comments A-76 through A-78: The Board approved staff's proposal to prohibit the use of toxic air contaminant chlorinated solvents in the categories of Carpet/Upholstery Cleaner, Fabric Protectant, Multi-Purpose Lubricant, Penetrant, Pressurized Gas Duster, Sealant or Caulking Compound, and Spot Remover.

A-79. Comment: I appreciate the "can do" attitude of the industry reps that have testified here today. But I want to remind the Board that not all the companies out there that are producing these products that are high polluting have that attitude. And I hope to the extent that the staff and the Board are going to grant flexibility now or in the future, that you're paying attention to who's really trying and the companies and industries that really aren't trying. [CCA-2]

Agency Response: Comment noted. However, to comply with the VOC limits, manufacturers and marketers have always had the flexibility of choosing any reformulation pathway for their affected consumer products, as long as they do not exceed the VOC limit or include prohibited substances.

A-80. Comment: We urge your Board to substantially accelerate your emission reduction programs to achieve healthful air for the 16 million residents of the South Coast Air Quality Management District. In particular, we recommend that your Board direct staff to further consider future reductions from General Purpose Cleaners, General Purpose Degreasers, Glass Cleaners (including industrial and institutional (I&I) products) with a VOC limit of one percent by weight, and Multi-Purpose Solvent and Paint Lacquer Thinners with a VOC limit of three percent by weight, as included in your original proposal for the current rule amendment. We request that these categories be included in CARB's proposed statewide regulation amendment scheduled for November 2008 and request that the Board so direct the staff with the attached resolution language. [SCAQMD-1, SCAQMD-2]

Agency Response: Board considered but rejected the suggested language for inclusion in Resolution 08-30. However, staff did commit to return to the Board with regulatory strategies for those categories.

- A-81. Comment:** I also urge you to include additional VOC reductions from some of the worst culprits – multipurpose cleaners, degreasers and glass removers. [CCA1tr]
- A-82. Comment:** Direct staff today to include industrial and janitorial cleaning products so that they can establish a real timeline to come back with a VOC limit for those products. [CCA-1]
- A-83. Comment:** We ask that you move quickly to regulate some other categories faster than actually your staff has proposed and is staff recommendations.

The first category is the general purpose cleaners, general purpose degreasers, and glass cleaners, where we would propose 1 percent by weight. And that would achieve almost two tons of reduction in South Coast. And the second is multipurpose paint and lacquer thinners that would be no more than 3 percent by weight. And that would achieve roughly an additional six tons of reduction in South Coast. So we could make up the deficit that we need by 2014 in rapid fashion.

We've actually provided your staff with an extensive amount of technical information regarding the feasibility of these limits. We did so last December. Your staff actually proposed the lacquer thinner limits in its original proposal and then pulled it back. The products are available. They're on the market. We've looked at them. They're compliant. And we would urge you to modify the proposed resolution to include a request of the staff to at least bring to you so that we can have a public debate this coming November about the feasibility of these limits. We deserve the opportunity to appear before you in November and to be heard on this issue. [SCAQMD-2]

- A-84. Comment:** We strongly encourage you to include in the language to regulate emissions from institutional and janitorial cleaning products. If the Board includes this language, which was not included in the last draft, there would be an additional reduction of 4.5 tpd of VOC emissions, an increase of almost 100 percent from the original proposal. While we at SEIU Local 1877 strive to include green cleaning products in our contract language, we need the state's help in regulating the use of these extremely toxic cleaning products. [SEIU-1]
- A-85. Comment:** What I ask is that this issue of cleaning products come up before you in November, that you commit today to bringing this item up at your November hearing. [SEIU-2]
- A-86. Comment:** We want to push you to fairly quickly address some of those other products including cleaners and degreasers, paint and lacquer

thinners, and paint strippers. We hope that you'll be able to put those on the agenda for later this year. [Sierra]

A-87. Comment: Fast track the additional categories that have been delayed to help us meet our smog reduction and toxics reduction goals and to get the greatest public health benefit we can as quickly as possible. We appreciate the regulation that the staff is bringing forward today. And that's an important step forward. But we are concerned that the CARB Board should commit to bringing these additional categories that have been delayed, like paint and lacquer thinners, to the Board as quickly as possible. We would also prefer the November time frame for bringing the paint and lacquer thinner category forward. [ALA]

Agency Response to Comments A-81 through A-87: This rulemaking does not address cleaning products, paint and lacquer thinners or paint strippers. Therefore, these comments are not directed at the proposed amendments. However, for completeness, staff responds as follows: staff is committed to return as soon as possible to the Board to propose regulatory strategies for these products if the requirements are found to be commercially and technologically feasible.

A-88. Comment: ARB has had some significant success in regulating consumer products, and that that has been not only important in reducing the emissions that form smog but also in terms of driving industry to innovate. I think that as Cal/EPA looks more broadly at how to green our chemistry, we've actually suggested that there's a lot to be learned from ARB's experience. Although there are also some limitations in your statutory authority, so we need to do some broadening there. We would actually like to see multimedia assessments of current products and of proposed alternatives that would account for not only emissions into air but releases to water, impacts on worker health and safety, and hazardous and solid wastes that are generated as well as greenhouse gas emissions. Under your current statutory authority you can't do that. [Sierra]

Agency Response: Comment noted.

A-89. Comment: Most of the potential emission reductions have been put off till November or later from this round of consumer products regulation. And some of our comments are -- and to your staff and to the Board members have been focused on that. Five tons is important. It's significant. But we want to get the other 30 that you have the potential to get in the near term. The staff has told us that they need to do survey work in work groups. Fair enough. But we hope the Board will strongly encourage the staff to do those as quickly as possible and not dillydally, if

you will, not delay regulating this sector because some industry wants to do a work group for two or three years. I mean this is a very important sector. And if you look at your own website and the projections for emissions in 2010 and 2020, it's very obvious. The numbers are there showing how important it is to regulate this sector better than we have to date. [CCA-2]

Agency Response: Comment noted.

B. 15-DAY COMMENTS

1. General Comments

- B-1. Comment:** CSPA supports the Modified Text for the Proposed Amendments released on August 12, 2008.

Agency Response: Comment noted.

- B-2. Comment:** CSPA Supports the ARB Decision to Delete the Proposed Definition for the Term “Not for Retail Sale.” The apparent intent of the proposed definition of the term “Not for Retail Sale” was to clarify (but not change) the use of this term in the definitions for at least two product categories.”

CSPA believes that it is critically important for ARB to clearly identify which products are subject to California's very stringent VOC limits. Precise and unambiguous regulatory provisions benefit both ARB and the regulated entities. Thus, CSPA supports the ARB's decision to withdraw the original proposed definition. In written comments CSPA filed on June 23, the Association presents pragmatic recommendations for producing clear demarcations for the products that ARB considers to be subject to the applicable VOC limits. CSPA commits to continue working cooperatively with ARB staff and the other stakeholders to develop a regulatory language that removes any potential ambiguity as to whether the ARB's regulatory provisions apply to specific products.

Agency Response: Comment noted. At the hearing, the Board approved the modification to the delete the definition of “Not For Retail Sale.”

- B-3. Comment:** CSPA Supports ARB's Action to Clarify the Definition of the Term “Floor Maintenance Product.”

The modification to the definition for this product category removes any potential ambiguity as to applicable regulatory limits. During the past 20

years, ARB staff has done a commendable job developing a comprehensive set of precise definitions to ensure that no product is inadvertently subject to more than one VOC limit or more than one set of regulations. In this case, the modification makes it unambiguously clear that the Floor Maintenance Product category is subject to provisions of the Consumer Products Regulation. CSPA strongly believes that this type of clarity is necessary for companies to fully comply with ARB's comprehensive regulatory requirements.

Agency Response: Comment noted. At the hearing, the Board approved the modification to clarify that the "Floor Maintenance Product" category does not include architectural coatings products.

B-4. Comment: CSPA Supports ARB's Action Clarifying the Applicability of the Regulatory Limit for the "Motor Vehicle Wash" Product Category.

The modification to the Motor Vehicle Wash Product category in the Table of Standards unambiguously conveys ARB's intent that the stringent new VOC limit applies only to the nonaerosol form of this particular product category. CSPA strongly believes that this modification is both reasonable and necessary; accordingly, we support the ARB's action on this issue.

CSPA thoroughly reviewed the Board Resolution and Modified Text issued subsequent to the June 26th Board Hearing and believes that it is consistent with the Board instructions to staff at the Hearing. Therefore, CSPA supports all of the modifications released for 15-day public comment. CSPA appreciates the opportunity to comment on these important proposed regulatory changes to the California Consumer Products Regulation. CSPA commends the ARB staff's exemplary efforts to ensure that all interested parties had an opportunity to participate in this open and transparent public effort to develop amendments to California's very comprehensive Consumer Products Regulation. [CSPA-4]

Agency Response: Comment noted. At the hearing, the Board approved the modification to clarify that the limit for Motor Vehicle Wash applies only to non-aerosol products.

2. Comments on Sealant or Caulking Compound Products

B-5. Comment: I was told recently that the caulking that I use to seal up my customers' homes could be outlawed. We are a siding and window contractor who use Quad and NPC sealant for sealing around windows, doors, corners, etc. I use these petroleum based rubber sealants because it adheres the best in moist weather. Its flexibility and ability to adhere during all weather conditions has been the best for our business. We

have tried using other sealant's in the past and have had service claims where caulking has cracked or deteriorated within a few years.

When doing projects such as fiber cement, caulking is essential to sealing up around windows and without the best sealant in the market, we would be doing homeowners a disservice. Please do not outlaw these sealants or at least provide a contractor's exception! Thanks! [3GI]

- B-6. Comment:** Roof leaks and window leaks are nasty problems. The area is usually wet and silicon sealants or latex sealants simply do not work. Only a rubber sealant with a petroleum solvent allows repairs to damp areas. I heard that California plans to ban all petroleum solvents in sealants to protect household consumers.

Trained contractors need an exemption from this rule that will allow them to select a rubber sealant having a petroleum solvent that will fix the leaking problems permanently for the consumer. [ABP]

- B-7. Comment:** I have sold building products for the last 25 years. The last 4 years I have immersed myself in "Moisture Management" in construction, both new and remodel. I have seen sealant failures due to substandard sealants. I have also dealt with contractor frustration when a silicone sealant just won't stick to a damp surface, nor could they paint over it. Professional sealants, those that include petroleum solvents, have proven to be the only year-round sealant contractors can use with confidence. I have seen the destruction leaks have caused around windows, on roofs and behind siding. Many homes have become uninhabitable due to these leaks and either the new homeowner is stuck with a home they can't resell or the builder is forced to spend thousands of dollars to correct the problem. California MUST allow contractors to be exempt from this ruling. Quality construction is a must and professional sealants are insurance they are doing everything possible to prevent mold issues and serious water damage. Please consider these issues and reduce all of the litigation that will result by restricting contractors on the sealants they can use and the seasons they can work. [DARCOE-2]

- B-8. Comment:** I have heard that the caulking that most of the siding, window and Patio Cover contractors are using at this time are going to be taken off the market (California only). We currently use petroleum based rubber sealants because it adheres best in wet weather or under damp conditions. If we are limited to silicone-based sealants, only, then the call back rate to product failure will skyrocket. We believe in giving our customers the best quality installation possible and we can not do that with current silicone product that are on the market today.

Please DO NOT OUTLAW THESE SEALANTS BUT IF YOU DO PLEASE MAKE IT AN EXCEPTION FOR "CONTRACTORS USE ONLY." [VDI]

Agency Response to Comments B-5 through B-8: These comments are not directed at the modifications made by the August 12, 2008 Notice of Public Availability of Modified Text. However, for completeness, staff incorporates the Agency Response to comments A-69 through A-71 herein. The proposal approved by the Board will accommodate a wide range of applications including the work performed by professional contractors under various environmental conditions.