



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R09-OAR-2020-0213; FRL-10009-13-Region 9

Air Plan Approval; California; Consumer Products Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the California Air Resources Board's Consumer Products portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer products and a supporting test method. The EPA is also proposing to approve revisions to California's Tables of Maximum Incremental Reactivity (MIR) Values to support its Aerosol Coating Products regulation. We are proposing to approve state rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [**Insert date 30 days after date of publication in the Federal Register**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2020-0213 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were amended

and submitted by the California Air Resources Board (CARB). The rules rely on CARB Method 310, which was submitted by CARB to the EPA on June 4, 2019.

TABLE 1 - SUBMITTED RULES

Local Agency	California Code of Regulations	Title	Amended ¹	Submitted
CARB	Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1	Antiperspirants and Deodorants ²	5/25/2018	06/04/2019
CARB	Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2	Consumer Products ³	5/25/2018	06/04/2019
CARB	Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 3	Aerosol Coating Products ⁴	09/17/2014	12/01/2016
CARB	Title 17, Division 3,	Tables of Maximum Incremental Reactivity (MIR) Values ⁵	09/17/2014	12/01/2016

¹ CARB adopted amendments to articles 1, 2 and 3 of subchapter 8.5 and article 1 of subchapter 8.6 on September 26, 2013. The California Office of Administrative Law (OAL) approved the amendments on September 17, 2014, effective January 1, 2015. CARB submitted the September 26, 2013 amendments to the EPA as a SIP revision on December 1, 2016. CARB adopted further amendments to articles 1 and 2 of subchapter 8.5 on May 25, 2018. The 2018 amendments were approved by the California OAL on December 31, 2018, effective January 1, 2019. CARB also adopted amendments to Test Method 310 on May 25, 2018. CARB submitted articles 1 and 2 and Test Method 310, as amended on May 25, 2018, to the EPA as a SIP revision by letter dated June 4, 2019.

² Article 1 of subchapter 8.5 includes sections 94500, 94501, 94502, 94503, 94503.5, 94504, 94505, 94506 and 94506.5.

³ Article 2 of subchapter 8.5 includes sections 94507 through 94517.

⁴ Article 3 of subchapter 8.5 includes sections 94520 through 94528.

⁵ Article 1 of subchapter 8.6 includes sections 94700 and 94701.

Local Agency	California Code of Regulations	Title	Amended ¹	Submitted
CARB	Chapter 1, Subchapter 8.6, Article 1	Method 310 – Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products	5/25/2018	6/4/2019

CARB’s December 1, 2016 SIP revision submittal became complete by operation of law on June 1, 2017. CARB’s June 4, 2019 SIP revision submittal became complete by operation of law on December 4, 2019.

B. Are there other versions of these rules?

We approved earlier versions of CARB’s Consumer Products rules into the SIP as follows: Subchapter 8.5, Article 1 (“Antiperspirants and Deodorants”) at 74 FR 57074 (November 4, 2009); Article 2 (“Consumer Products”) at 79 FR 62346 (October 17, 2014); Article 3 (“Aerosol Coating Products”) at 74 FR 57074 (November 4, 2009), and Subchapter 8.6, Article 1 (“Tables of Maximum Incremental Reactivity (MIR) Values”) at 70 FR 53930 (September 13, 2005). The EPA has not previously approved CARB Method 310 as part of the California SIP.

C. What is the purpose of the submitted rule revisions?

Emissions of VOCs help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. VOC emissions from consumer products contribute to

the formation of ozone. CARB's Staff Report: Initial Statement of Reasons for Proposed Rulemaking for its consumer products amendments states, "For more than twenty years, the Board has taken actions pertaining to the regulation of consumer products. Three regulations [Antiperspirants and Deodorants, Consumer Products, and Aerosol Coatings] have set VOC limits for 129 consumer product categories. These three regulations, when fully effective, will reduce VOC emissions by about 50 percent compared to 1990 levels."⁶ CARB predicts that consumer products will, by 2020, become the largest source category of VOC emissions in the South Coast Air Basin,⁷ which is classified as an "Extreme" nonattainment area for the following National Ambient Air Quality Standards (NAAQS): 1979 1-hour ozone, 1997 8-hour ozone, 2008 8-hour ozone, and the 2015 ozone NAAQS (see 40 CFR part 81).

The current amendments to Article 1 ("Antiperspirants and Deodorants") of 17 CCR Division 3 ("Air Resources"), chapter 1 ("Air Resources Board"), subchapter 8.5 ("Consumer Products") update certain definitions and references. The current amendments to Article 2 ("Consumer Products") of subchapter 8.5 revise certain definitions, lower certain VOC standards, and clarify and update certain administrative and reporting requirements. Current amendments to Article 3 ("Aerosol Coating Products") of subchapter 8.5 clarify applicability, revise certain definitions, delete mass-based VOC limits and add new, lower reactivity-based limits for general and specialty aerosol coatings. Lastly, the current amendments to Article 1 ("Tables of Maximum Incremental Reactivity (MIR) Values") of 17 CCR Division 3, chapter 1, subchapter 8.6 ("Maximum Incremental Reactivity") update MIR values for many individual

⁶ "Staff Report: Initial Statement of Reasons for Proposed Rulemaking," California Air Resources Board, August 7, 2013 ("Staff Report") at Executive Summary-2 available at <https://ww3.arb.ca.gov/regact/2013/cp2013/cp13isor.pdf>.

⁷ Id. at Chapter II-9.

chemical compounds and hydrocarbon solvent groupings. CARB estimates that the current amendments will result in equivalent VOC emission reductions of approximately 4 tons per day (tpd) statewide, of which approximately 1.8 tpd would occur in the area under the jurisdiction of the South Coast Air Quality Management District.

The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). California's consumer products regulations cover VOC area sources. In 1998, the EPA promulgated a national rule to regulate VOC emissions from consumer products, 63 FR 48831 (September 11, 1998), and in 2008, the EPA promulgated a national rule to regulate the ozone forming potential of aerosol coating products, 73 FR 15621 (March 24, 2008). The amendments from CARB that we are proposing to approve herein contain more stringent limits for consumer products than the corresponding limits in the national consumer products VOC rule. With respect to CARB's Aerosol Coatings Products rule, we find that the amendments we are proposing to approve herein contain limits that achieve lower ozone-forming potential relative to the reactivity-based limits for aerosol coating products in the EPA's national aerosol coatings rule.

Guidance and policy documents that we used to evaluate enforceability,

revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “National Volatile Organic Compound Emission Standards for Consumer and Commercial Products,” 40 CFR part 59; particularly, subpart C (“National Volatile Organic Compound Emission Standards for Consumer Products,” and subpart E (“National Volatile Organic Compound Emission Standards for Aerosol Coatings”).
4. “Model Rule for Consumer Products,” Ozone Transport Commission, September 19, 2006.⁸

B. *Do the rules meet the evaluation criteria?*

When the EPA developed its national consumer products rules in 40 CFR part 59, we reviewed existing consumer products and aerosol coating regulations from states including those from California.⁹ Since the EPA promulgated its national rules, California has periodically amended its consumer products and aerosol coating rules to add new product categories, combine similar product categories, generally reduce the VOC content limits for consumer products or product-weighted maximum incremental reactivity limits for aerosol coatings, and made other amendments to improve implementation and enforcement of its rules. CARB also

⁸ Available at <https://otcair.org/document.asp?fview=modelrules>.

⁹ National Volatile Organic Compound Emission Standards for Consumer Products - proposed rule 61 FR 14531 (April 2, 1996), and National Volatile Organic Compound Emission Standards for Aerosol Coatings – proposed rule 72 FR 38951 (July 16, 2007).

updated its Tables of Maximum Incremental Reactivity consistent with newer science.

We compared CARB's amended rules against the EPA's rules and find that, overall, CARB's rules are the same or more stringent than the national rules. We noted in our TSD for aerosol coatings that there are a few limited instances where CARB adopted new aerosol coating categories or where it merged existing aerosol coating product categories, to streamline its regulation, that could result in a small emissions increase. More specifically, when CARB merged existing subcategories in the Hobby/Model/Craft aerosol coating category into a single category and merged the existing subcategories in the Shellac Sealer aerosol coating category into a single category, CARB estimated that these amendments could have resulted in approximately 0.1 tpd increase for 3-4 months, prior to 2015, if all of the products in these coatings were to reformulate.¹⁰ CARB points out, however, that the likelihood of an increase in the ozone forming potential for these product categories is small because all products are already in full compliance with the limits that took effect January 1, 2015. This hypothetical and temporary increase in emissions (approximately 0.1 tpd increase for 3-4 months) would not occur after January 1, 2015 because the 2015 limits, with only minor exceptions, are, on the whole, more stringent than the prior (i.e., 2003) limits for the affected categories whether merged or not merged.

The EPA notes that, although its national Consumer Products and Aerosol Coatings rules and CARB's rules are similar, they are not identical. Products will need to comply with the regulations in effect from each agency, and compliance with CARB's rules does not necessarily mean that the product complies with the EPA's national rules. This proposed rulemaking action

¹⁰ CARB Staff Report at Chapter IV-60 and Chapter VIII-153.

is limited to an evaluation of CARB's amended rules for compliance with the requirements under the CAA and the EPA's regulations for SIP revisions and does not opine on whether a product that meets CARB's rules can also satisfy requirements in the national consumer product rules.

In sum, this action is consistent with EPA regulations, policy and guidance. The EPA has promulgated a national consumer products regulation and a national aerosol coatings regulation (40 CFR Part 59, Subparts C and E). There are similarities and differences between the California regulations and the national regulations. The national consumer products and aerosol coatings regulations do not preclude states from adopting more stringent regulations. In this instance, CARB's Consumer Products regulations are both broader and, in many cases, the same or more stringent than the federal regulations. As noted above, CARB estimates that the current amendments will result in equivalent VOC emission reductions of approximately 4 tons per day (tpd) statewide, of which approximately 1.8 tpd would occur in the area under the jurisdiction of the South Coast Air Quality Management District.

These rules are also consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. The TSDs have more information on our evaluation.

C. Public comment and proposed action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the Federal Register**]. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the CARB rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state regulations as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 18, 2020.

John Busterud
Regional Administrator,
Region IX.

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