



2008 Year-End Issue

The Auto-Scout™ is a newsletter from ASPA to update our members on legislative and regulatory action across the country as well as ASPA activity and industry events. Members are encouraged to submit suggestions for enhancements and improvements -- we want to ensure that this publication is a useful tool for ASPA member companies. For further information, please contact [Andy Hackman](#) or [Sean Moore](#).



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CARB Regulation Updates

CARB Finalizes New VOC Standards

In late June the California Air Resources Board (CARB) finalized regulations that establish new volatile organic compound (VOC) limits for several automotive categories. ASPA was intensely involved in negotiating more reasonable standards during this 2-year rulemaking process. The impacted product categories and the effective dates of each standard are listed in the chart below. Also, categories indicated as, “no toxics” would be restricted from containing chlorinated compounds.

2008 Amendments to California Consumer Products Regulation

CATEGORY	NEW CARB VOC LIMIT	EFFECTIVE DATE	Additional Factors
Automotive Wash/Cleaner	0.2%	12/31/2010	No Toxics
Tire/Wheel Cleaner Aerosols	8%	12/31/2010	No Toxics
Tire or Wheel Cleaner Non-Aerosols	2%	12/31/2010	No Toxics
Windshield Water Repellent	75%	12/31/2010	
Glass Cleaner Aerosols	10%	12/31/2012	

Multi-Purpose Lubricants	25% & 10%	12/31/2013, 12/31/2015	No Toxics
Penetrants	25%	12/31/2013	No Toxics

CARB Delays Work on Second Rulemaking 2008

CARB initially began work on a second rulemaking for 2008, immediately after the June rulemaking, and planned for it to be completed in November, focusing solely on five cleaners and aerosol products already regulated several times over the past 20 years.

In September, ASPA continued its efforts to seek delay in the new CARB rulemaking, seeking to have it combined with the rulemaking already planned for completion in June 2009. In early September, ASPA and a coalition of industry partners submitted comments to CARB urging delay. ASPA advocated that historically all rulemakings in the past decade have required two years from initial planning to completion.

In late September, CARB agreed to delay the rulemaking based on the need to conduct and peer review health assessments on several LVP glycol ethers and other ingredients that could increase in use due to the new VOC limits for cleaners. CARB also is evaluating the potential for additional global warming restrictions under this rulemaking in 2009.

CARB Issues Interpretation Impacting Diesel Fuels and Fuel Additives

Diesel emissions control strategies (DECS) are used to control exhaust from diesel fleets and are being required for use in California for various vehicles in years to come. CARB has now established verification procedure requires that a DECS manufacturer specify the fuel and additives necessary for proper functioning of the DECS. Use of any alternative diesel fuels and/or fuel additives not specifically listed in the DECS verification Executive Order would be illegal and strictly prohibited. Please read Advisory Number 379 which details the use of alternative diesel fuels and fuel additives in engines equipped with DECS (<http://www.arb.ca.gov/enf/advs/advs379.pdf>).

ASPA is contacting CARB staff to develop a procedure to ensure that aftermarket diesel fuel additives can continue to be used in DEC units. For more information please email Andy Hackman (ahackman@cspa.org).

CARB Takes Action on DIY Refrigerants

On December 5, CARB has issued a "Notice of Public Hearing to Consider the Adoption of a Proposed Regulation for Small Containers of Automotive Refrigerant" to announce the proposed adoption on January 22, 2009, of their regulation of consumer "do-it-yourself" automotive refrigerant refills. This will be the second regulation of consumer products under AB 32, and implements the other Early Action Measure aimed at HFC emission reductions. This notice and the associated "formal" regulatory materials can be accessed from CARB's website at the address: <http://www.arb.ca.gov/regact/2009/hfc09/hfc09.htm>.

The regulation does not propose a ban, as was originally recommended by CARB staff's Early Action Measure, but does contain some substantive requirements for these products, which consist of HFC-134a in aerosol containers with special valves. For more information please email aaron.lowe@aftermarket.org

Reminder: Code-Date Filing Requirements

As reported previously, CARB's regulation requires manufacturers that use unique company-specific date-codes to file an annual explanation of the code. The information must be received by CARB on or before January 31st of each year. See 17 CCR § 94512(c)(1).

In addition, CARB and a majority of the OTC States impose a continuous duty for manufacturers to report any changes in company-specific date-codes. Thus, if a company modifies its unique date-code at any time during the year, the company must provide an explanation of the new (or modified) code before any of its products are sold, supplied, or offered for sale.

For updated state agency contact list or if you have any questions or need additional information, please contact Andy Hackman (ahackman@cspa.org) or Sean Moore (smoore@cspa.org).

Reminder: New CARB VOC Standards Go Into Effect 12/31/08

The following table summarizes the VOC limits adopted by CARB in 2006 for ASPA member companies' products. ASPA members are reminded that products sold in California after these dates must meet these new standards.

Product Category	CARB's 2006 Amendment Limits (% VOC)	Effective Date
Automotive Care Products		
Brake Cleaner	20	31-Dec-08
	10	31-Dec-10
Carburetor or Fuel-injection Air Intake Cleaners	20	31-Dec-08
	10	31-Dec-10
Engine Degreaser (Aerosol)	10	31-Dec-10
Automotive Windshield Washer Fluid (Type A)	25	31-Dec-08
General Purpose Degreasers (Aerosol)	20	31-Dec-08
	10	31-Dec-10

OTC State Updates

Several States Have New OTC Model Rule Regulations – Take Effect January 1, 2009

As ASPA has reported over the last several years, and months several states in the East Coast and Midwest are taking action to promulgate regulations based on California's current VOC limits. A short summary of state that have taken action, and impending effective dates for those rules are provided below. ASPA also reminds companies to be aware of **date-code reporting requirements** in these states and in California, per our earlier email communications and newsletters.

Connecticut has issued a new OTC-based regulation that takes effect Jan. 1, 2009 (it combines the old OTC Model Rule VOC limits with CARB's CONS-1 standards). See: <http://www.ct.gov/dep/lib/dep/air/regulations/mainregs/sec40consumerprod.pdf>.

Maine, Maryland, Michigan, Pennsylvania, and the District of Columbia have issued final rules revising their existing regulations to incorporate the provisions of the new OTC Model Rule.

- The revised Maine regulation takes effect Jan. 1, 2009; it is posted at: <http://www.maine.gov/dep/air/regulations/docs/CHAP152%20Consumer%20Products%202007.pdf>.
- The revised Maryland regulations take effect Jan. 1, 2009; it is posted at: http://www.dsd.state.md.us/comar/subtitle_chapters/26_Chapters.htm.
- The revised Michigan regulation takes effect Jan. 1, 2009; it is posted at: <http://www.deq.state.mi.us/apcrats/documents/2007-006EQ.pdf>.
- The revised Pennsylvania regulations take effect Jan. 1, 2009; it is posted at: <http://www.pabulletin.com/secure/data/vol38/38-41/1843.html>
- The revised D.C. regulation is posted at: http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/information2/public.notices/proposed_rulemaking.pdf.

Ohio has issued a new final regulation incorporating all provisions of the new OTC Model Rule. The regulation takes effect Jan. 1, 2009. See http://www.epa.state.oh.us/dapc/regs/3745-112/3745_112.html.

Massachusetts has issued a new final regulation (based on the revised OTC Model Rule) replaces the Commonwealth's existing Best Available Controls for Consumer and Commercial Products regulations, 310 CMR 7.25(1) through (12) in their entirety. Thus, MassDEP **no** longer requires companies to submit annual Compliance Certifications. The new regulation takes effect Jan. 1, 2009. See: <http://www.mass.gov/dep/air/laws/aimcprrg.pdf>.

On October 30, the **New Jersey** Department of Environmental Protection (NJDEP) adopted final revisions to the State's existing Consumer Products Regulation that will take effect on January 1, 2009; please see the article below for more information on this unique rule and its special requirements.

Old OTC Regulations Remain in Effect in Four States

In addition to new VOC regulations, previously issued OTC Regulations, based on the original OTC Model Rule remain in effect in the following states:

- Delaware
- New Hampshire
- New York
- Virginia (**Only effective** in the Northern Virginia Emission Control Area; and in the Fredericksburg VOC Emission Control Area. See 9 VAC 5-40-7330).

New Jersey Approves OTC Rule to Take Effect January 1, 2009.

On October 30, the New Jersey Department of Environmental Protection (NJDEP) adopted final revisions to the State's existing Consumer Products Regulation. The revised regulation was filed with the New Jersey Office of Administrative Law (OAL) and should be published in the December 1, 2008, edition of the *New Jersey Register*. The provisions of the new regulation take effect January 1, 2009. The text of the final rule is not yet available.

NJDEP staff has indicated that the final regulation will be substantially identical to the proposed rule issued in November 2007. The proposed regulation incorporated provisions of the Ozone Transport Commission's (OTC's) revised Model Rule. The text of the proposed regulation is posted at:

NJDEP's Final Regulation Will Include Restrictions on the Use of Chlorinated Compounds and Adopts CARB's Restrictions on Products Used in Automotive Maintenance & Repair Activities.

ASPA did not oppose the NJDEP's proposal to incorporate CARB CONS-1 VOC limits in a manner consistent with the Revised OTC Model Rule. However, ASPA expressed serious concerns about the proposed inclusion of OTC Model Rule's optional provisions that ban the use of chlorinated solvents (*i.e.*, methylene chloride, perchloroethylene or trichloroethylene) in seven specifically enumerated product categories. In addition ASPA expressed very serious concerns about the NJDEP's decision to propose a regulation governing "automotive consumer products" based on CARB's Chlorinated Toxic Air Contaminants Airborne Toxic Control Measure – Automotive Maintenance and Repair Activities (See 17 CCR § 93111), a provision not even included as an option in the OTC Model.

Unfortunately, the NJDEP senior staff member confirmed that both of these provisions opposed by ASPA are included in the final rule. Thus, a total of seven jurisdictions (in addition to California) have now promulgated final regulations that impose restrictions on the use of chlorinated solvents in seven categories (the other six jurisdictions are: Connecticut, the District of Columbia, Maine, Maryland, Massachusetts and Michigan).

In addition, New Jersey is now ***the first state*** to adopt CARB's airborne toxic control measure banning brake cleaners, carburetor/fuel-injection cleaners, engine degreasers and general purpose degreasers used in automotive maintenance and repair facilities if these products contain chlorinated compounds. This decision sets a very troublesome precedent that may be followed by other states.

Illinois May Not Issue a Final Rule Until Early-2009.

The Illinois Pollution Control Board held two public hearings in the Spring of 2007 on the Illinois EPA's proposed consumer products regulation. It was anticipated that the Board would approve the proposed rule sometime this fall. However, the Board has been focused on other regulatory issues (*e.g.*, NOx RACT Rule, Mercury Rule) and thus, may not take final action on the consumer products regulation until early next year. Based upon discussion with Illinois EPA staff, the effective date of the new VOC limits will likely be adjusted to sometime ***after*** the currently proposed January 1, 2009, timeframe if the Board does not issue a final rule this year.

Indiana Continues to Consider OTC-based Regulations

In 2007, Indiana issued notice that it may either: (1) issue a proposed new regulation (based on the revised OTC Model Rule), or (2) rely on the soon-to-be-released U.S. Environmental Protection Agency's revised National Consumer Products Regulation. Current indications are that Indiana is likely to issue a proposed rule in early 2009 that would take effect in late 2009, based upon the OTC Model Rule.

Delaware, New York, and Rhode Island Also Expected to Issue Rules with 2009 Effective Dates

Delaware, New York, and Rhode Island have also indicated that they will be proposing OTC-base regulations or revisions to current regulations with effective dates in 2009. ASPA expects that these proposed rules will be consistent with the New OTC Model Rule. Delaware has already published draft revisions to its current rule that are consistent with the New OTC Model Rule, and would take effect on May 1, 2009. Rhode Island also published a new consumer products regulation based on the New OTC Model rule, which would take effect on April 1, 2009. Rhode Island's proposed rule also contained provisions restricting chlorinated solvents in industrial and automotive products. Finally, New York has conveyed that they expected to publish a similar proposal to revise their current consumer products regulation soon.

ASPA has commented on these proposals to express concern about chlorinated solvent provisions and will continue to keep members informed of the progress in these states.

Federal Regulatory Updates

EPA Update on National Consumer Products Rule Revision

As ASPA has reported, EPA has been planning, for some time, to propose an update to the National Consumer Products Rule adopted in 1998 to make it consistent with the Revised OTC Model Rule that has been adopted in many Eastern, Mid-Atlantic and Midwestern states (and therefore would contain almost all of the standards adopted by California through CONS-1 in 2004). The new effective date targeted for the revised VOC limits is January 1, 2011.

EPA has provided an update of their expected proposal, promulgation, and compliance dates for this action, which are as follows:

Proposed Rule published in Federal Register	April 30, 2009
End of public comment period	June 30, 2009
Final Rule published in Federal Register	December 15, 2009
Compliance date	January 1, 2011

ASPA will keep members informed on EPA's progress toward this timeline and will provide notification immediately as this regulation becomes formally published.

New CPSC Product Certification Requirements

As ASPA has reported over the last two-months, the Consumer Product Safety Improvement Act of 2008 (CPSIA), signed into law by President Bush on Aug. 14, reauthorized the Consumer Product Safety Act (CPSA) and established safety standards and requirements for consumer and children's products.

At a public meeting held by the U.S. Consumer Product Safety Commission (CPSC) on Oct. 2, it was indicated that ASPA members' products would be subject to a new safety certification requirement in the legislation. Section 102(a)(1) of CPSIA sets new certification requirements for products subject to CPSC-administered regulations or standards. Specifically, the new requirements apply to products manufactured or imported on or after Nov. 12, 2008 that are subject to cautionary labeling under the Federal Hazardous Substances Act (FHSA) or the special packaging requirements of the Poison Prevention Packaging Act (PPPA).

Background – Generally, existing product safety requirements already mandate the information required to be available under longstanding provisions of Section 14(a) applicable to CPSA standards. As deliberations took place in the House on H.R. 4040 (CPSIA), the certification requirement was expected to apply to products such as fireworks, matchbooks and bicycle helmets. At an October public meeting, however, Gib Mullan, assistant executive director, CPSC Office of Compliance and Field Operations, stated the 2008 Act expands the general certification requirements to all products subject to CPSA bans as well as standards, or to any "similar rule, ban, standard, or regulation under any other act enforced by the commission." ASPA has expressed concerns with this interpretation and disagrees that this was the intent of the legislation; however, CPSC has not changed its position on this issue.

Initially, certificates were required to "accompany" each product or shipment of products covered by the same certificate and a copy of the certificate was to be "furnished to each distributor or retailer of the product." On Nov. 10, CPSC issued an immediate final rule stating that the certification requirement could be satisfied by providing the statutorily required information by electronic means.

Certification requirements under Section 102(a) – As required under Section 102(a), the certification must contain the following information:

- Identification of the product covered by this certificate;
- Citation to each CPSC product safety regulation to which this product is being certified;
- Identification of the foreign or domestic manufacturer certifying compliance of the product;
- Identification of the U.S. importer, if applicable, certifying compliance of the product;
- Identification of the private labeler, if applicable, certifying compliance of the product (if any);
- Contact information for the individual maintaining records of test results;
- Date and place where this product was manufactured;
- Date and place where this product was tested for compliance with the regulation(s) cited above;
- Identification of any third-party laboratory on whose testing the certificate depends.

ASPA continues to lobby for relief from this new requirement with the CPSC and has worked proactively to keep members informed of the rapidly changing interpretations that CPSC has made on this requirement. In the interim, ASPA members are strongly encouraged to ensure that they are complying with the new product certification requirement. Several ASPA members are providing certification confirmation through MSDS information that is provided to distributors and retailers, others are providing notification via bills of lading that direct customers to an electronic certificate and still others are providing hard-copy certifications with each shipment of impacted product. More information on how to comply can be found at:

<http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09042.html>

EPA Changes Fuel Additives Test Methods

In Early December the Environmental Protection Agency (EPA) published a notice which would allow fuel and additive manufacturers to use twelve new and improved fuel testing procedures published by the American Society for Testing and Materials (ASTM). Once these test method changes are adopted, they will supersede the corresponding earlier versions of these test methods in EPA's motor vehicle fuel regulations. EPA views these changes as noncontroversial and anticipates no adverse comment.

This rule will become effective February 6, 2009 without further notice, unless EPA receives adverse comment by January 7, 2009. More information is available at: <http://edocket.access.gpo.gov/2008/pdf/E8-28370.pdf>. If you have concerns with this proposed action please email Leigh Merino at lmerino@mema.org.