



Advisory

To: CONSUMER PRODUCTS
MANUFACTURERS,
DISTRIBUTORS AND RETAILERS

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INDUSTRIAL & INSTITUTIONAL PRODUCTS DEFINITION CLARIFICATION

At the request of industry representatives, this advisory was undertaken to more clearly describe the so-called “industrial” products that are not regulated under the California Air Resources Board (ARB) consumer products regulation (Title 17, California Code of Regulations (CCR), sections 94507-94517).

The consumer products regulation applies not only to “household products” used by individual consumers around their homes, but it also applies to products that are commonly known as “institutional products” or “industrial and institutional (I&I) products.” Section 94508(a) of the consumer products regulation defines these terms 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 incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

You will notice that the last sentence of this definition specifically excludes “... products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment ...”. These types of products are commonly referred to as “industrial products.” The consumer products regulation does not apply to industrial products; they are exempt under the regulation. (There is one exception to this rule; industrial “aerosol adhesives,” as well as aerosol adhesives used by households and institutions, are regulated under the ARB consumer products regulation. This exception exists in order to implement legislation enacted by the California Legislature in 1996 (see California Health and Safety Code section 41712(h)).

Examples of industrial products that are exempt from the consumer products regulations include such items as mold-release products, which aid in releasing newly manufactured products from molds, and non-aerosol adhesives used in manufacturing goods or commodities. Also exempt are those industrial products that may not actually become a part of the finished good or

commodity, but are nonetheless essential to the manufacturing process. For example, cleaning, degreasing, and lubricating products may be exempt under the consumer products regulation if the manufacturing process is the only use for these products.

Examples of products that do fall under the definition of “institutional product” or “industrial and institutional (I&I) product,” and are thus subject to the consumer products regulation, include products used in the general cleaning or maintenance of a facility. Typical I&I products are often similar to commonly available household products, and are used to perform tasks (such as cleaning, waxing, etc.) that are similar to those performed by household consumers. Examples of such I&I products include air fresheners, floor cleaners, floor waxes, general-purpose cleaners, and insecticides.

The ARB staff has received a number of questions about the definition of I&I products in the consumer products regulation. The following are staff’s answers to some of commonly asked questions.

1: Is the term “I&I” used the same way by both the ARB and the consumer products industry?

There are some differences in the way that industry and the ARB consumer products regulations use this term. The term “I&I” is generally used by industry to describe products used by businesses or institutions, as opposed to individual household consumers. In addition, the term “consumer products” is sometimes used by industry in reference to household products, as opposed to “I&I” or commercial products sold to businesses. The term “I&I”, as used by the ARB, is intended to distinguish those products that are sold, supplied, offered for sale, or manufactured for household consumers, or used in the maintenance or operation of an establishment, as opposed to products intended for industrial-use only. The ARB definition of I&I specifically excludes “products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.” These products are referred to as “I&I” products by the consumer products industry, but are not considered I&I products under the ARB definition, and therefore not subject to regulation by ARB as “consumer products”.

2: Workers at our facility occasionally use a “high-volatile organic compound (VOC)” industrial lubricant for purposes other than its intended use, such as lubricating door hinges at the facility. When the lubricant VOC limits go into effect in 2003, can enforcement action be taken against us for such incidental uses? (As used here, the term “high-VOC” means that the product does not meet the applicable VOC standard specified in the consumer products regulation.)

The consumer products regulation applies to selling, supplying, offering for sale, or manufacturing consumer products for use in California. The regulation does not apply to, or impose any restrictions on, the act of “using” or “applying” a product (except for aerosol adhesives, as explained below). Therefore, no enforcement action under the consumer products regulation would be taken against a person who is using or applying an industrial lubricant for some incidental use at the facility, even if the product is not designed or intended for such use.

There is an exception to this general rule; as a result of 1996 legislation, the consumer products regulation does prohibit the use of aerosol adhesives that do not comply with the ARB’s VOC standards for this category (see Title 17, CCR, section 94509(i)). You should also be aware that

the applicability of the consumer products regulation is different from the ARB aerosol coatings regulation, which also requires the use of compliant aerosol coatings for all commercial applications (see Title 17, CCR, sections 94520, 94522(a)(1), and 94523(d)). The aerosol coatings regulation also regulates all aerosol coatings, including “industrial” aerosol coatings used exclusively in the manufacture or construction of goods or commodities.

3: Our manufacturing facility wishes to use a high-VOC, noncomplying glass cleaner to clean our finished product as it comes off the assembly line. Would a glass cleaner used for this purpose be considered an “industrial” product and thus be exempt from the consumer products regulation?

Yes, if the high-VOC product is designed to be used exclusively to clean finished products manufactured at the site of an establishment. Under the I&I definition in the consumer products regulation, such products are exempt from regulation (i.e., they are considered “industrial” products) even though they are not “actually incorporated into” the manufactured goods or commodities. It should be noted that the use of these products may be subject to regulations adopted by the local air district with jurisdiction over the manufacturing site.

4: Our facility wishes to purchase a high-VOC product from a national distributor of I&I products. The product does not comply with the VOC limits specified in the ARB consumer products regulation, but it is a complying product in most other states. Could enforcement action be taken against us if we purchase such a product, but use it exclusively as an industrial product?

As mentioned above, the consumer products regulation does not apply to or prohibit the act of “using” non-complying products (except for aerosol adhesives, as explained previously). In addition, the regulation also does not apply to or prohibit the act of “purchasing” non-complying products. Consequently, it would not be a violation of the consumer products regulation for a company to merely use or purchase non-complying products for use in an industrial application (or even for use in a non-industrial application).

However, the regulation does prohibit “selling, supplying, or offering for sale” non-complying consumer products for use in California. So, depending on the circumstances in a particular case, the person or company who sold a non-complying product to the facility may have violated the regulation. We will now explain what is meant by “depending on the circumstances.” If a high-VOC product is designed, marketed, and distributed exclusively as an industrial product, then there would be no violation for selling that product in California. Such a product would not be a “non-complying product” because the product would be exempt from the consumer products regulation. However, if a high-VOC product is designed and marketed for use in both an industrial setting and by household or institutional consumers, then it is illegal to sell this product in California. Such a sale would be illegal even though a particular sale may have been made to a company that intends to use the product in an industrial setting. If a product otherwise meets the definition of a “consumer product” under the regulation, it does not cease to be subject to the regulation simply because a particular sale happens to be to a manufacturing facility instead of an individual consumer.

The answer to question #4 addresses only the requirements of the ARB consumer products regulation. There may well be situations in which a company that uses a high-VOC product would be in violation of other laws or regulations, even though the company would not be in violation of the ARB consumer products regulation. For example, the company may be

operating under a local air district permit (or other government permit) which restricts the company's use of certain kinds of high-VOC products. Further, there may be a local air district rule that applies to the facility and requires the use of low-VOC products. In addition, a company that purchased or used non-complying products in order to gain a competitive advantage might run afoul of state unfair competition laws. These are only examples; all of the circumstances of a specific situation would have to be evaluated before one can definitively state whether a company could legally use a particular product in a particular way.

5: Does the ARB consumer products regulation apply to the sale of adhesives and sealants to contractors for use at residential or commercial building sites? Is the use of these products by contractors an "industrial" use that is exempt from the consumer products regulation?

The ARB consumer products regulation specifies VOC standards for sealants and adhesives. The standards apply to all sizes of aerosol adhesives, but the regulation covers only the smaller sizes of non-aerosol adhesives and sealants (i.e., non-aerosol products that, less packaging, weigh one pound or less and consist of 16 fluid ounces or less).

The use of such adhesives and sealants by contractors does not constitute an "industrial use, and therefore products sold to contractors must comply with the ARB consumer products regulation. A product used at a temporary building site, to build a permanent structure, does not qualify as an "industrial" product because it is not "incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment." In addition, the vast majority of the smaller adhesive and sealant products are offered for sale at hardware stores, home supply centers, and warehouse clubs to both contractors and the general public. As explained previously in this advisory, products marketed in this way are "consumer products" even if a particular sale happens to be for an "industrial" use.

It should also be mentioned that a number of local air districts have adopted rules regulating the use of adhesives and sealants in situations where the ARB consumer products regulation does not apply. As mentioned above, the ARB consumer products regulation applies only to the smaller containers of sealants and non-aerosol adhesives (i.e., non-aerosol products that, less packaging, weigh one pound or less, or consist of 16 fluid ounces or less). Sealants and non-aerosol adhesives sold in larger sizes (i.e., products that, less packaging, weigh more than one pound or consist of more than 16 fluid ounces) are often subject to local air district rules. These local district rules typically apply to the use of adhesives and sealants by contractors or other persons, as well as the sale, supply, offer for sale, or manufacture of these products. In addition, these local rules often specify more stringent standards than the VOC standards in the ARB consumer products regulation. For aerosol adhesives, the ARB consumer products regulation applies to all uses of all aerosol adhesives, including consumer, industrial, and commercial uses. However, California law allows the local districts to adopt stricter standards for aerosol adhesives than the standards in the ARB consumer products regulation. In any case, the stricter district standard would apply.

If you have questions or comments regarding this advisory, please contact Mr. Steven Giorgi, Manager, Consumer Products Enforcement Section at (916) 322-6965. The Consumer Products Regulation is available via the internet at <http://www.arb.ca.gov/consprod/regs/regs.htm>.