SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report
Proposed Amended Rule 314 – Fees for Architectural Coatings

August 7, 2013

Deputy Executive Officer
Planning, Rule Development, & Area Sources
Elaine Chang, DrPH

Assistant Deputy Executive Officer
Planning, Rule Development, & Area Sources
Laki Tisopulos, Ph.D., P.E.

Planning and Rules Manager, Area Sources
Naveen Berry

Author:	Heather Farr, Air Quality Specialist
Reviewed By:	William Wong, Principal Deputy District Counsel
	David De Boer, Program Supervisor

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
GOVERNING BOARD

Chairman: DR. WILLIAM A. BURKE
Speaker of the Assembly Appointee

Vice Chairman: DENNIS YATES
Mayor, Chino
Cities of San Bernardino County

MEMBERS:

Michael D. Antonovich
Supervisor, Fifth District
County of Los Angeles

Ben Benoit
Councilmember, Wildomar
Cities of Riverside County

John J. Benoit
Supervisor, Fourth District
County of Riverside

Michael A. Cacciotti
Councilmember, South Pasadena
Cities of Los Angeles County Eastern Region

Josie Gonzales
Supervisor, Fifth District
County of San Bernardino

Joseph K. Lyou, Ph.D.
Governor's Appointee

Judith Mitchell
Mayor Pro Tem, Rolling Hills Estates
Cities of Los Angeles County/Western Region

Shawn Nelson
Supervisor, Fourth District
County of Orange

Dr. Clark E. Parker, Sr.
Senate Rules Appointee

Jan Perry
Councilmember, 9th District
City of Los Angeles Representative

Miguel A. Pulido
Mayor, Santa Ana
Cities of Orange County

EXECUTIVE OFFICER:
BARRY R. WALLERSTEIN, D.Env.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

BACKGROUND 2

STAFF ASSESSMENT FOR THE PROPOSED AMENDMENTS 3

CALIFORNIA ENVIROMENTAL QUALITY ACT (CEQA) 9

COST IMPACT 10

LEGISLATIVE AUTHORITY 10

AQMP AND LEGAL MANDATES 10

DRAFT FINDING UNDER CALIFORNIA HEALTH AND SAFETY CODE 11

COMMENTS AND RESPONSES 12

ACRONYMS USED IN THIS REPORT

ACO - Averaging Compliance Option

AQER - Annual Quantity and Emissions Report

AQMP - Air Quality Management Plan

CEQA - California Environmental Quality Act

PAR - Proposed Amended Rule

SCAQMD - South Coast Air Quality Management District

SCE - Small Container Exemption

VOC - Volatile Organic Compound

EXECUTIVE SUMMARY

Rule 314 – Fees for Architectural Coatings, adopted by the Governing Board on June 6, 2008, sets fees for manufacturers of architectural coatings to recover the SCAQMD cost of regulating architectural coatings. Architectural coatings represent one of the largest VOC emission source categories regulated by the SCAQMD. When the rule was adopted, the manufacturers requested the ability to report numerous products on one line, also referred to as "grouping." Staff experience, based on compliance reviews and audits of reports submitted, indicates that grouping of multiple products leads to lack of compliance verification.

Staff is proposing to remove the ability to use "grouping," exempt small manufacturers from fees, and clarify certain rule provisions.

The proposed amendments to Rule 314 will:

- Include private labelers in the Applicability section and in the definition of Architectural Coatings Manufacturer
- Add nine definitions, amend five definitions, and delete one definition
- Remove the ability to group products
- Clarify the reporting requirements for multi-component coatings and concentrates
- Add a reporting requirement to indicate if a product was sold under the 4,000 foot exemption
- Require Big Box retailers to submit their annual reports to the District as well as the manufacturers and include a list of stores where the products were sold
- Update the fee rate and remove the outdated phase-in rates
- Require manufacturers to pay the fee rate in effect for the year in which they are reporting and not the fee rate that was in effect when the sales and emissions actually occurred
- Clarify that once the distributors list has been submitted, only changes need to be submitted for subsequent years
- Amend the exemption for coatings containing 5 or less grams of VOC per liter of material and recycled coatings such that they are only exempt from the fees provided they submit their Annual Quantity and Emissions Report (AQER) by the time prescribed in subparagraph (i)(2)

- Exempt small manufacturers from fee requirements, provided they submit their AQER in the time prescribed in subparagraph (i)(2)
- Exempt coatings that are offered for sale in powder form, containing no polymer content, that are solely mixed with water prior to use, from reporting requirements

BACKGROUND

Rule 314 affects about 200 architectural coatings manufacturers. Beginning in 2009 and each subsequent calendar year, Rule 314 requires architectural coatings manufacturers to report to SCAQMD the total annual quantity (in gallons) and emissions of each of their architectural products distributed or sold into or within the SCAQMD for use in the SCAQMD, during the previous calendar year. Fees are assessed on the manufacturers' reported annual quantity of architectural coatings as well as the cumulative VOC emissions from the reported annual quantity of coatings. Data collected from the manufacturers also provides SCAQMD with an annual emissions inventory that is used for planning purposes.

Rule 314 contains a fee exemption for architectural coatings containing 5 or less grams of VOC per liter of material and for sale of recycled coatings to further encourage the development, marketing, and use of lower-VOC and recycled coatings.

The following table summarizes the sales, emissions, and fees since rule implementation in 2009. The fee data includes fees collected during the fiscal year and not necessarily the fees that were generated by the sales and emissions for a particular reporting year. In the table below, there may be new companies that reported for previous years or paid penalties during a subsequent fiscal year. For example, all fees collected from a company that first reports in 2011, even though they pay fees for prior years as well, shows as revenue in 2011 fiscal year.

Sales, Emissions and Fees by Year

Year	Total Sales	Waterborne	Solvent Based	Emissions (tpd)	Fees Collected by Fiscal Year
2008	39,435,801	35,817,785	2,343,326	15.5	$1,226,651
2009	34,166,695	31,338,195	1,606,233	12	$1,445,715
2010	34,494,772	31,586,806	1,668,599	11.9	$2,503,791
2011	38,084,334	34,656,353	2,019,224	12.7	$2,808,927
2012*	35,105,489	32,239,536	1,589,770	10.6	$2,104,360

***Year to date, not all manufacturers reported or paid at time the data was queried (June 6, 2013).**

Upon initial adoption of Rule 314, the intent was to strengthen the compliance review and to recover program costs of the architectural coatings program and provide an incentive for lower VOC formulations. The projected cost of the comprehensive program was approximately $4.2 million with anticipated additional staffing for compliance reviews. However, the fees collected have been significantly below the projections due to the contraction in the architectural coatings market as a result of the recession, as well as the reduction of emissions resulting from commercialized coatings with VOC contents well below the designated compliance limits. While consumer awareness and demand for lower emitting products is one factor, staff believes the reduction in emissions is also in part due to design of the fee rate in Rule 314. The fees are bifurcated between sales-based and emissions-based, with an exemption from fees for coatings that contain less than 5 g/L material. This incentivizes manufacturers to formulate low-VOC coatings in order to reduce their fees. In some instances this resulted in manufacturers developing and marketing near-zero VOC coatings, now sold nationwide resulting in air quality benefits within and outside of the SCAQMD. This was the intent of the fee structure and staff is not proposing to raise the fees to meet the original projections. Staff maintained the cost of implementing the program by not increasing necessary resources as originally projected.

STAFF ASSESSMENT FOR THE PROPOSED AMENDMENTS

APPLICABILITY

For clarification, in the applicability section, staff is proposing to include private labelers, who sell coatings under their name but do not actually manufacturer the coating. Currently, Rule 314 applies only to manufacturers, and the proposed amendment clarifies that it also applies to private labelers. If the product was toll manufactured, (i.e. manufactured by a coatings manufacturer for another party), and sold by a private labeler, the private labeler whose name is on the label is ultimately responsible for reporting those sales. These two parties can then arrange to have the toll manufacturer report those coatings provided the coatings are reported and not double reported.

DEFINITIONS

Aerosol Coating Product

Staff is proposing to amend the definition for aerosol coating product to harmonize it with proposed definition in the California Air Resources Board's Consumer Product Regulation.

Architectural Coatings

Staff is proposing to harmonize the definition of an Architectural Coating with the definition in Rule 1113- Architectural Coatings (Rule 1113), as amended in June 2011.

Architectural Coatings Manufacturer

Staff is proposing to change the definition of an architectural coatings manufacturer to be consistent with the definition of a manufacturer in Rule 1113. Staff is also proposing to amend

the definition of an architectural coatings manufacturer to state that "For the purposes of this rule, architectural coatings manufacturers include private labelers."

Authorized Representative
Staff is proposing to add a definition for the Authorized Representative. This term is used in addition to the Responsible Party on the Form M, which is used to generate a SCAQMD manufacturers ID number. Subparagraph (d)(3) has been added to clarify the requirements for delegating and changing the Authorized Representative and the Responsible Party.

Concentrate
Staff is adding a definition for a coating sold as a concentrate that is diluted with water or an exempt compound. There has been confusion regarding how to report the VOC content and volume for coatings sold as concentrates; staff is proposing revisions to section (e) to clarify requirements for reporting concentrates.

Multi-Component Coating
Staff is adding a definition for multi-component coatings as there has also been confusion regarding how to report their VOC content. Proposed revisions to section (e) contain additional guidance.

Product Line
The definition for a product line is being deleted as it is no longer necessary with the proposed elimination of grouping.

Private Labeler
Staff is adding a definition for a private labeler, since they are now being included in the proposed revisions to the Applicability section and the definition of Architectural Coatings Manufacturer.

Recycled Coating
Staff is adding a definition for recycled coatings consistent with Rule 1113. The definition of a recycled coating references secondary and post-consumer coatings, both of those definitions from Rule 1113 are also added in the proposed amendment.

Stationary Structures
Staff is adding a definition for stationary structures for clarification as it is mentioned in the definition of an architectural coating. This definition is consistent with Rule 1113.

Toll Manufacturer
A toll manufacturer makes coatings that another entity sells. The rule referenced toll manufacturers and staff is adding a definition for clarification.

REQUIREMENT TO OBTAIN A MANUFACTURER IDENTIFICATION (ID) NUMBER

Staff is proposing to include language that the Responsible Party or Authorized Representative can be delegated or changed by submitting a signed Form M. Form M is used initially when manufacturers apply for a manufacturer's ID number and to change either the Responsible Party or the Authorized Representative. The Authorized Representative is typically the person who compiles the data and submits the AQER. The authorized user for the online reporting program is also the Authorized Representative. Only one authorized user is allowed per facility in the program so as people leave an organization, it is common to change the Authorized Representative by submitted a new signed Form M. Access is not granted to the online reporting program until the District receives a signed Form M as the AQER requires submittals of confidential sales information. There are no fees associated with changes to the Authorized Representative or the Responsible Party.

PROPOSED REVISIONS - AQER

Grouping

Staff is proposing to remove the ability for manufacturers to group their products in their AQER. The initial intention with grouping was to allow the manufacturer to consolidate multiple products in one line item provided the coatings:

- Belong to the same coating category in Rule 1113 Table of Standards,
- Have the same vehicle technology (solvent or water),
- Are of the same resin type,
- Are recommended for the same use (either interior, exterior or dual use),
- Have the same form (either single - or multiple-component),
- Do not exceed a coating (regulatory) VOC range of 25 grams per liter between the highest and lowest coating in the group.

However, based on rule implementation over the past five years, staff's experience shows that grouping has led to compliance verification challenges when coatings are encountered in the field. Staff cannot confirm if a particular product has been reported in the AQER when grouped. In addition, audits have shown that manufacturers also have difficulty separating the grouped products when requested to validate the information reported in the AQER. Therefore, staff concludes that grouping complicates the reporting process and compliance verification.

Multi-Component Coatings and Concentrates

Staff is including guidance on the reporting of multi-component coatings and concentrates. In compliance checks over the years, staff has found several instances where coatings appeared to have been sold over the VOC limit when they were actually one part of a two part system or a coating sold as a concentrate. Based on the proposed amendments for multi-component coatings, part one and part two are to be reported as separate line items, but the VOC should be

reported as recommended for use by the manufacturer (e.g. mixed). For concentrates, the VOC is to be reported at the minimal dilution recommended (e.g. the highest VOC possible) and the volume reported should also include the volume at the minimal dilution recommended. This is consistent with the approach used in Rule 1171- Solvent Cleaning Operations and the Annual Emissions Reporting Program.

Flags in the Online Reporting Program

Staff is also including clarification regarding the possible flags that are available in the program. Clause (e)(1)(I)(iv) Other (with Explanation) is not an available option in the online reporting program. That clause is being replaced by low solids, which is an option in the program. Staff is also adding an option for manufacturers to indicate if high-VOC stains and lacquers were sold using the 4,000 feet exemption.

Manufacturers with No Sales

Staff is also adding clarification regarding manufacturers who have no sales for the prior calendar year. They must either submit a letter on company letterhead, signed by the Responsible Party, stating they had no sales or indicate no sales in the online reporting program. For companies who do not intend to sell architectural coatings into or within the District in the future, they can indicate that in writing so they do not have to report "no sales" annually. That request must be done in writing and signed by the Responsible Party.

Annual "Big Box" Reports

The January 9, 2009 amendment to Rule 314 included a requirement for "big box" (e.g. The Home Depot, Lowe's, etc.) retailers to report their sales within the SCAQMD back to the manufacturers that supply architectural coatings to them. This requirement was adopted because the rule only applied to coating manufacturers who distribute or sell their manufactured coatings into or within the SCAQMD, and excludes "big box" retailers that ship coatings into the SCAQMD from warehouses located outside the SCAQMD. Over the past few years, staff investigations have shown that in some cases that the reports were not forwarded in a timely manner. Staff has also observed vastly different numbers reported on "big box" reports that represent the same sales year and manufacturer compared to that reported by the manufacturers. Staff needs the ability to track the reported big box sales independently and review for discrepancies. Therefore, staff is proposing to require "big box" retailers to forward their annual reports prepared for the architectural coating manufacturers to SCAQMD as well.

FEES

Staff is proposing to remove the outdated phased-in fee rates. Upon rule adoption, manufacturers requested the fees be phased in up to the maximum amount of approximately $0.08 per gallon (depending on the VOC of the coating). The fees have been at the maximum fee rate since the 2010 calendar year and increase by the consumer price index (CPI) every year under Rule 320 - Automatic Adjustment Based on Consumer Price Index for Regulation III Fees.

To be consistent with other fee rules (e.g. Rule 301 – Permitting and Associated Fees), staff is adding clarification that the fee rates to be applied shall be the fee rate in effect for the year in which the sales and emissions are actually reported, and not the fee rate in effect for the year the emissions actually occurred. Other than for the 2008 and 2009 calendar years, this is currently being implemented.

The removal of the phased in fee rate will result in an increase of fees for those manufacturer who have never reported under Rule 314 or who have to revise 2008 or 2009 reports. The following shows the increase for those years:

Year	Current Sales Fee	Proposed Sales Fee	Current Emission Fee	Proposed Emission Fee
2008	$0.018	$0.039	$128.47	$260.54
2009	$0.029	$0.039	$193.23	$260.54

After January 1, 2014 and January 1, 2015, manufacturers will no longer be required to submit the data from to 2008 or 2009, respectively, due to the 5-year record retention requirement in the rule. This increase in cost will only be temporary and affect the few small manufacturers who are currently not complying with Rule 314.

DISTRIBUTORS LIST

Rule 314 requires manufacturers to submit distributor(s) lists on an annual basis. These lists are the same year after year for the majority of manufacturers. To reduce the reporting burden, staff is proposing to add clarification that once the initial list has been submitted; manufacturers' only need to submit changes to the list in subsequent years.

EXEMPTIONS

Staff is proposing to amend the exemptions for recycled coatings and coatings that contain less than 5 g/L material such that they are only exempt from the fees if the manufacturer submits the reports by the deadline specified in subparagraph (i)(2):

> If both the fee payments and the Annual Quantity and Emissions Report for the previous calendar year are not received by May 30, they shall be considered late; and a surcharge for late payment shall be imposed for fees past due as set forth in paragraph (i)(3). Architectural coatings manufacturers subject to paragraph (d)(2) on or after July 1 of the reporting year shall have an additional 6 months, or any additional time approved by the Executive Officer, to submit the fee payments and the Annual Quantity and Emissions Report for the acquired architectural coatings manufacturer. **For the purpose of this**

paragraph, the fee payments and the Annual Quantity and Emissions Report shall be considered to be timely received by the District if it is postmarked on or before May 30. If May 30 falls on a Saturday, Sunday, or a state holiday, the fee payments and Annual Quantity and Emissions Report may be postmarked on the next business day following the Saturday, Sunday, or the state holiday with the same effect as if they had been postmarked on May 30.

Manufacturers who are entirely exempt from the fees tend to neglect the reporting process and it takes considerable resources to get them into the system. They will still be exempt for the fees provided the report is submitted on time.

Staff is also proposing to exempt small manufacturers from the fees provided they report by the deadline specified in subparagraph (i)(2). There are a considerable number of manufacturers who sell only a very small quantity of coating into or within the District, and they have insignificant emissions contribution. The following is the breakdown of the small versus large manufacturers for 2011 year data reported as of 2012. Staff is not using the 2012 year data since not all manufacturers have submitted their AQERs. For the evaluation below, staff used the fees that a manufacturer would have paid if they reported on time, during the current fiscal year, and may not necessarily reflect the fees that were actually paid.

Rule 314 Data Based on the 2011 Calendar Year Sales (Unaudited)

Total Fees for Quantity and Emissions that Occurred in 2011: $2,160,053 (does not include late fees or CPI adjustment)

Total Number of Manufacturers Reporting: 204

	Cumulative Fees	Percent of total
Top 5 Companies	$1,203,408.71	56%
Top 10 Companies	$1,618,732.74	75%
Top 20 Companies	$1,848,884.33	86%
Top 30 Companies	$1,940,562.90	90%
Bottom 30 Companies	$810.60	0.04%
Bottom 20 Companies	$194.00	0.009%
Bottom 10 Companies	$49.40	0.002%
Bottom 5 Companies	$5.66	0.0003%

Companies sold <100gallons	
Number of Manufacturers	16
Cumulative Fees	$110.17
Percent of Total	0.005%
Highest Fee	$36.97
Companies sold <500 gallons	
Number of Manufacturers	38
Cumulative Fees	$1,152.73
Percent of Total	0.053%
Highest Fee	$229.13
Companies sold <1,000 gallons	
Number of Manufacturers	48
Cumulative Fees	$1,664.90
Percent of Total	0.077%
Highest Fee	$236.51

Staff is proposing to exempt manufacturers who sell less than 1,000 gallons a year and have annual VOC emissions of 0.5 tons or less in a calendar year, estimated to be about 25% of all manufacturers that reported in 2012. The work required to track these fees exceeds the value received.

Staff would like to clarify that coatings which are sold as a dry mix and solely mixed with water, including Stucco, are exempt from the reporting requirements in Rule 314. This exemption does not include polymer containing powder coatings. There is a large volume of these architectural coatings, and although they fall under Rule 1113, there is no value in having these cementitious dry coatings reported. They would fall under the flat coating category, and the high volume of zero-VOC coatings would skew the architectural coatings data.

CALIFORNIA ENVIROMENTAL QUALITY ACT (CEQA)

SCAQMD staff has reviewed the proposed amendments to Rule 314 pursuant to CEQA Guidelines §15002(k) - Three Step Process, and CEQA Guidelines §15061 – Review for Exemption, and has determined that the proposed amendments are exempt from CEQA pursuant to CEQA Guidelines §15273 - Rates, Tolls, Fares and Charges, because PAR 314 amends fees for architectural coatings manufacturers who distribute or sell their manufactured architectural

coatings into or within the SCAQMD area of jurisdiction for use in the SCAQMD area of jurisdiction for the purpose of recovering the program costs for establishing and implementing Rule 1113 – Architectural Coatings.

PAR 314 would only affect definitions, fees, and reporting requirements. The evaluation of the proposed project resulted in the conclusion that PAR 314 would not create any adverse effects on air quality or any other environmental areas; therefore, it can be seen with certainty that there is no possibility that the proposed project may have a significant adverse effect on the environment. Since it can be seen with certainty that the proposed project has no potential to adversely affect air quality or any other environmental area, PAR 314 is also exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) – Review for Exemption.

COST IMPACT

The proposed amendments will result in a minor increase in fees to manufacturers who failed to report their 2008 or 2009 fees. This increase in cost will only be temporary and affect the few small manufacturers who are in violation of Rule 314 reporting requirements and not currently in the system. After January 1, 2014 and January 1, 2015, manufacturers will no longer be required to submit the data back to 2008 or 2009 respectively as there is a 5-year record retention policy. Because the rule amendments do not significantly affect air quality or emissions limitations, a socioeconomic analysis is not required.

LEGISLATIVE AUTHORITY

The California Legislature created the SCAQMD in 1977 (The Lewis Presley Air Quality Management Act, Health and Safety Code Section 40400 et seq.) as the agency responsible for developing and enforcing air pollution controls and regulations in the Basin. By statute, the SCAQMD is required to adopt an AQMP demonstrating compliance with all state and federal ambient air quality standards for the Basin [California Health and Safety Code Section 40440(a)]. Furthermore, the SCAQMD must adopt rules and regulations that carry out the AQMP [California Health and Safety Code Section 40440(a)].

AQMP AND LEGAL MANDATES

The California Health and Safety Code requires the SCAQMD to adopt an AQMP to meet state and federal ambient air quality standards in the South Coast Air Basin. In addition, the California Health and Safety Code requires the SCAQMD to adopt rules and regulations that carry out the objectives of the AQMP. The rule amendments are not AQMP control measures nor do they fall under Health and Safety Code Section 40920.1 so cost-effectiveness is not relevant.

DRAFT FINDING UNDER CALIFORNIA HEALTH AND SAFETY CODE

Health and Safety Code Section 40727 requires that prior to adopting, amending or repealing a rule or regulation, the SCAQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the hearing. The draft findings are as follows:

Necessity - The SCAQMD Governing Board has determined that a need exists to amend Rule 314 – Fees for Architectural Coatings to clarify rule language, remove the grouping provision, and exempt small manufacturers from the fees.

Authority - The SCAQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40702, and 41508.

Clarity - The SCAQMD Governing Board has determined that the proposed amendments to Rule 314 – Fees for Architectural Coatings, are written and displayed so that the meaning can be easily understood by persons directly affected by them.

Consistency - The SCAQMD Governing Board has determined that PAR 314 – Fees for Architectural Coatings, is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

Non-Duplication - The SCAQMD Governing Board has determined that the proposed amendments to Rule 314 – Fees for Architectural Coatings do not impose the same requirement as any existing state or federal regulation, and the proposed amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, the SCAQMD.

Reference - In adopting these amendments, the SCAQMD Governing Board references the following statutes which the SCAQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001 (rules to achieve ambient air quality standards), 40440(a) (rules to carry out the Air Quality Management Plan), and 40440(c) (cost-effectiveness), 40522.5 (fees on areawide sources of emissions), 40725 through 40728 and Federal Clean Air Act Sections 171 et sq., 181 et seq., and 116.

COMMENTS AND RESPONSES

The following are excerpts from the comment letters and emails. The public comments were received during the commenting period from June 20, 2013 to June 27, 2013. Additional comment letters received after the close of comments are also included.

The following are comments from the American Coatings Association – Comment Letter #1.

Comment

1. Concentrate – ACA suggests the following changes to the Concentrate definition and Section (e)(1)(F) and (G):

"(8) CONCENTRATE is a coating that is supplied in a form that must be diluted with water or an exempt compound according to the manufacturer's application instructions in order to yield the desired ~~film~~ coating properties.

(F) The grams of VOC per liter of coating, less water and less exempt compounds for each product as supplied or for multi-component coatings and coatings sold as a concentrate, as recommended for use by the manufacturer's minimum label dilution instructions; ~~recommended for use by the manufacturer;~~

(G) The grams of VOC per liter of material for each product as supplied or for multi-component coatings and coatings sold as a concentrate, as recommended for use by the manufacturer's minimum label dilution instructions. Additionally, for each solvent-based coatings, grams of VOC per liter of material shall include ~~with maximum~~ any thinning as recommended by the manufacturer. ~~allowed with a VOC, as listed in the Technical Data Sheet, shall also be included.~~

Response

Staff concurs with the wording change in the definition but opted to change the language on the VOC to a list format for clarity.

Comment

b) Applicability

This rule applies to architectural coatings manufacturers ~~or private labelers~~ that distribute or sell their manufactured architectural coatings into or within the District for use in the District and are subject to Rule 1113 - Architectural Coatings. This rule also applies to private labelers and to big box retailers that distribute or sell architectural coatings into or within the District for use in the District and are subject to Rule 1113 – Architectural Coatings…

Response

Staff concurs with this change and has revised the proposed rule accordingly.

Comment

3. Authorized Representative:

c)(5) AUTHORIZED REPRESENTATIVE ~~for a corporation is a corporate officer or an authorized representative so delegated by a corporate officer. The authorized representative~~ is the person authorized by a Responsible Party to prepare and submit the Annual Quantity and Emissions Report on behalf of an architectural coatings manufacturer or private labeler.

Response

Staff concurs with this change and amended the definition without the reference to private labeler. Private labeler is now included in the definition of the architectural coatings manufacturer.

Comment

4. Multi-component Coatings –

(b)(38) MULTI-COMPONENT COATING is a reactive coating requiring the addition of a separate catalyst or hardener before application to form an acceptable dry film."

Response

Staff concurs with this change and has revised the proposed rule accordingly.

Comment

5. Private Labeler:

(c)(16) PRIVATE LABELER of an architectural coating is n~~ot the manufacturer of the coatings but the~~ person, company, firm, or establishment (other than the toll manufacturer) identified ~~listed~~ on the product's label. The private labeler and the toll manufacturer of a product may, by agreement in writing filed with the District's Executive Officer, designate the manufacturer as the party responsible for compliance with this rule. ~~If the label lists two or more different persons, companies, firms, or establishments, they may mutually designate in writing the responsible party for compliance with this rule. That writing shall be filed with the District's Executive Officer.~~

Response

Staff concurs with the changes to the first sentence and has revised the proposed rule accordingly but did not include the guidance as to who is ultimately responsible for complying with the Rule 314 requirements. That guidance is included in the staff report.

Comment

6. Responsible Party:

(c)(18) RESPONSIBLE PARTY for a corporation is the ~~a~~ corporate officer so designated pursuant to subsection (d)(3) of this rule~~. or an authorized representative so delegated by a corporate officer. Delegation of an authorized representative must be made in writing to the Executive Officer.~~ A responsible party for a partnership or sole proprietorship is the general partner or proprietor, respectively, so designated pursuant to subsection (d)(3) of this rule.

Response

Staff included the suggested reference to subsection (d)(3) for clarification.

Comment

7. Designation or Change of Responsible Party and/or Authorized Representative

(d)(3) Designation or Change of Responsible Party and/or Authorized Representative

~~A~~application for a manufacturer ID number pursuant to (d)(1), as submitted by the Responsible Party for ~~A~~an architectural coatings manufacturer shall designate establish both the Responsible Party and the Authorized Representative~~. at the time they apply for the manufacturer ID number in (d)(1).~~ ~~A~~ ~~C~~changes ~~to~~ in the designation of either the Responsible Party or the Authorized Representative shall be made in writing using the same application form.

Response

Staff concurs with this change and has revised the proposed rule accordingly.

Comment

8. Exemption of Manufacturers from Rule 314 Fees - ACA suggests exempting manufacturers that sell less than 1000 gallons per year in the District. The 1000 gallon level will exempt an additional 10 companies and only reduce revenues by approximately $500. ACA does suggest that these companies continue submission of an Annual Quantity and Emissions Report so that these coatings are part of the 314 emissions data.

Response

Staff concurs with the change in the fee exemption to 1,000 gallons annually but added the additional condition that the manufacturer must also not emit more than 0.5 tons of VOCs annually. Staff does not believe that small manufacturers who sell predominantly high-VOC coatings should be exempted.

Comment

9. Big Box Annual Reports –ACA suggests the District require Big Box Stores send their Annual Reports to the District and the District then distribute these reports to the manufacturer's to interpret, report, and pay the fee. This should make the process more timely and easier for the District. ACA suggests that the current Annual report form is ambiguous in what the Big Boxes are supposed to put in the two columns. Please change the form to require the data in units sold, with one column for units of one liter or less and the other column for units greater than one liter. In addition, the Big Box Stores should be required to supply the list of stores, with street addresses, cities, and ZIP codes from which the data came. Since Big Box Stores have no economic incentive, they may (and have sometimes) included stores not located within the District; this is not fair given that manufacturers have to pay for these excess sales data.

Response

Staff is including a requirement that the big box retailers submit the reports to the District as well as the manufacturers. Staff is also proposing changes to the form to remove ambiguity, include the reporting of units as well as gallons, and a list of the stores from which the data came. Staff has reviewed this reporting form accordingly, with concurrence from the "big box" retailers on the changes.

Comment

10. Grouping – ACA encourages the District to retain the grouping option in some manner in order to reduce burden on the industry. The Rule 314 grouping is very important for reporting multiple colors of the same product line on a single line entry or multiple products with very similar formulations. Other companies use the grouping option for combining color testers (of different color) into one line item rather than hundreds of additional lines of data. Also, as mentioned at the June 20 meeting, companies are concerned about Confidential Business Information (CBI) – grouping provides companies a level of CBI protection, by disaggregating volume from product names and VOC content. We suggest that the grouping of products stay intact but modify the usage language to require the submission of the products in each group, simultaneously with the data submission.

Response

Staff believes that removing grouping from the rule does not increase the burden to industry. In contrast, based on discussions with some manufacturers, grouping products and calculating sales weighed averages adds an extra step to the reporting process requiring additional resources for completion of the AQER. Increased number of lines of data in an electronic database is also not burdensome. Staff understands industry's concerns about the confidentiality of the data and takes this concern very seriously. There are several steps in place that block an unauthorized user from accessing the data. Further, the SCAQMD implements and complies with the Public Records Act, ensuring that confidential data is addressed in a legally supported manner

In addition, the rule contains language regarding the confidentiality of the data in regard to the California Public Records Act:

(k) Confidentiality of Information

Subject to the provisions of the California Public Records Act (Govt. Code § 6250-6276.48) information submitted to the Executive Officer may be designated as confidential. The designation must be clearly indicated on the reporting form, identifying exactly which information is deemed confidential. District guidelines require a detailed and complete basis for such claim in the event of a public records request; therefore, manufacturers have the ability to indicate that their data is confidential before they electronically submit their Annual Quantity and Emissions Reports. The SCAQMD staff believes that the District's Guidelines for Implementing the California Public Records Act, which were adopted by the Governing Board on May 6, 2005 and amended on July 5, 2013 specifically with reference to trade secrets, adequately protect confidential information from misappropriation. The SCAQMD will request a justification from the entity claiming confidential information. The SCAQMD shall evaluate the justification, and any other information at its disposal, and determine if the justification supports the claim that the material is in fact trade secret under Gov. Code Sec. 6254 and Sec. 6254.7. If the SCAQMD determines that the claim of confidentiality is not meritorious or is inadequately supported by the evidence, the SCAQMD shall promptly notify, by certified mail and email, the entity who claimed confidential status that the justification is inadequate and that the information will be released after 21 calendar days from the date of such notice unless the person claiming trade secret brings a legal action to preclude such release.. At this time the entity will also be advised of its right to bring appropriate legal action to prevent disclosure, and of its right to further respond.

The SCAQMD has strategies in place for protecting the confidentiality of information claimed as confidential. The SCAQMD has been handling confidential and trade secret information for many years without incident. The SCAQMD's computer systems are protected from outside attackers, and access by internal staff is controlled and audited. A security assessment was

recently conducted which found no vulnerabilities from outside attackers. Controls for internal access include strong passwords, domain account authentication, limiting access to authorized users with proper role, antivirus software with updates, security software updates, and physical security.

Comment

11. Report Summary Issues – there seems to be a problem with the report summary page, specifically with regards to the quantity of 'products exempted' (products with a VOC content of less than 5 g/l). At least one ACA member reported that the number of 'products exempted' in their report summary is much less that the actual number of "exempt" products reported. Apparently, the counting of 'products exempted' in the Rule 314 report summary page is not working correctly.

Response

This is an issue with the online reporting program which will be addressed by the next reporting cycle.

Comment

12. Dry Mix Exemption – ACA suggests including additional dry mixes that do not contain VOCs including mortar, and grouts. ACA also suggests that there are dry coatings on the market where water is added and the paint is mixed together. Therefore, ACA suggests removing the text "containing no polymer", since this may spur on the development of zero VOC dry mix coatings.

"Architectural coatings offered for sale as a dry mix, ~~containing no polymer,~~ that are only mixed with water prior to use, including but not limited to stucco, clays, plasters, mortar, grouts."

Response

While staff would like to spur the development of "zero"-VOC dry mix coatings, we are also interested in following the trends of those sales. All "zero"-VOC coatings are already exempt from the fees in Rule 314 which should encourage their development. However, staff would like to continue to have those coatings reported.

In regard to mortar and grout, those products are not considered architectural coatings so they do not have to be reported under Rule 314. Those products fall under Rule 1168 – Adhesives and Sealants.