

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE CALIFORNIA REGULATIONS FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM ANTIPERSPIRANTS AND DEODORANTS, CONSUMER PRODUCTS, AND AEROSOL COATING PRODUCTS

The Air Resources Board (ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Antiperspirants and Deodorants, the Regulation for Reducing VOC Emissions from Consumer Products, and the Regulation for Reducing VOC Emissions from Aerosol Coating Products.

DATE: September 28, 1995

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the ARB, which will commence at 9:30 a.m., September 28, 1995 and may continue at 8:30 a.m., September 29, 1995. This item may not be considered until September 29, 1995. Please consult the agenda for the meeting, which will be available at least 10 days before September 29, 1995, to determine the time when this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94500-94506, 94508, and 94521, Title 17, California Code of Regulations (CCR).

Background

In 1988, the Legislature enacted the California Clean Air Act (the Act). The Act added section 41712 to the California Health and Safety Code, which requires the ARB to adopt regulations to achieve the maximum feasible reduction in reactive organic compounds (ROCs) emitted by consumer products ("ROC" is equivalent to "VOC"). As part of the regulatory adoption process, the ARB must determine that adequate data exists for it to adopt the regulations. The ARB must also determine that the regulations are technologically and commercially feasible and necessary to carry out the Board's responsibilities under Division 26 of the Health and Safety Code.

To date, four regulations have been adopted by the ARB pursuant to Health and Safety Code section 41712. On November 8, 1989, the ARB approved a regulation for reducing VOC emissions from antiperspirants and deodorants (the "antiperspirant and deodorant regulation"; sections 94500-94506.5, Title 17, CCR). The ARB then approved a more comprehensive regulation for reducing VOC emissions from 26 other categories of consumer products (the "consumer products regulation"; sections 94507-94517, Title 17, CCR), which was adopted by the Board in two phases. Phase I was approved on October 11, 1990, and Phase II was approved on January 9, 1992.

On September 22, 1994 the ARB approved the third regulation, the Alternative Control Plan for Consumer Products (ACP). The ACP is a voluntary, market-based regulation which employs the concept of an aggregate emissions cap or "bubble" from a group of products. The ACP regulation is designed to lower manufacturers' overall costs of reducing VOC emissions from consumer products while, at the same time, achieving emission reductions equivalent to the existing regulations. When approved by the Office of Administrative Law (OAL), this regulation will be contained in Title 17, CCR, sections 94540-94555.

The fourth regulation, the Regulation to Reduce VOC Emissions from Aerosol Coatings and Amendments to the ACP (the "aerosol coatings regulation"), was adopted by the Board on March 23, 1995. The aerosol coatings regulation limits the VOC content for 35 categories of aerosol paints. As part of this regulatory action, the Board also amended the ACP regulation to allow aerosol coating products to be included in an ACP. When approved by the OAL, this aerosol coatings regulation will be contained in Title 17, CCR, sections 94520-94528.

In addition to the four regulations mentioned above, on November 15, 1994 the ARB adopted the California State Implementation Plan for Ozone (SIP). The SIP is designed to satisfy the requirements of the federal Clean Air Act for ozone nonattainment areas in California classified as serious, severe, and extreme. The Consumer Products Element of the SIP is a multifaceted program composed of "near-term," "mid-term," and "long-term" control measures. The near-term SIP measures are comprised of our existing consumer products regulations (including the antiperspirant and deodorant regulation), the ACP, and the aerosol coatings regulation. The mid-term measures consist of regulations that will cover additional product categories not currently subject to the existing program. The long-term measures rely on new technologies with components of market incentives and consumer education.

On November 15, 1994 the ARB submitted the consumer products regulations (including the antiperspirant and deodorant regulation) to the United States Environmental Protection Agency (U.S. EPA) as a SIP revision. On February 14, 1995 the regulations were approved by the U.S. EPA as revisions to the SIP.

Description of the Proposed Regulatory Action

ARB staff has prepared, and is proposing for the Board's approval, the following amendments:

- 1. Modification of the Antiperspirant and Deodorant Regulation to allow all products to utilize the "ethanol exemption," rather than just "existing" products.**

The antiperspirant and deodorant regulation currently does not consider ethanol to be a Medium Volatility Organic Compound (MVOC) when determining the MVOC content of "existing" products. Existing products are defined in the regulation as products that were sold, supplied, offered for sale, or manufactured in California prior to January 1, 1990. By exempting ethanol in "existing" products only, the regulation may give a competitive advantage to companies that were selling ethanol-containing products prior to January 1, 1990. The ARB staff is proposing to exempt ethanol in all products, not just existing ones, to address this competitiveness concern and to provide the same formulation flexibility to all manufacturers, not just those who had ethanol-containing products in the marketplace prior to January 1, 1990.

ARB staff is also proposing amendments to the reporting requirements in the antiperspirant and deodorant regulation to require manufacturers to report emissions every year, instead of every three years. This change will allow the ARB to track both High Volatility Organic Compound (HVOC) and MVOC emissions on a yearly basis and determine if there is any increase in either HVOC or MVOC emissions as a result of this regulatory action.

- 2. Modifications to the "Special Requirements for Aerosol Manufacturers" in the Antiperspirant and Deodorant Regulation.**

ARB staff is proposing several modifications to this section. The regulation currently specifies that all compliance plans must have been submitted by January 1, 1994. The proposed modification removes the January 1994 date restriction and allows manufacturers to submit a compliance plan at any time. If the plan is approved by the Executive Officer, the manufacturer will be issued an Executive Order extending the time to meet the January 1, 1995 limits. This proposed modification will give new manufacturers the same opportunities as those manufacturers who were selling antiperspirants and deodorants in the marketplace prior to January 1, 1994.

The ARB staff is also proposing to modify the Table of Standards to include new interim VOC limits for aerosol antiperspirants and deodorants, effective January 1, 1997. These new interim limits are the same limits that manufacturers have voluntarily committed to achieve in all of the compliance plans that have previously been approved by the ARB.

Finally, the ARB staff is proposing to modify the special requirements for aerosol manufacturers to more clearly define the key components that must be included in a compliance plan in order for it to be approvable. These new requirements are closely based on the provisions of the compliance plans that have already been submitted to, and approved by, the ARB. The

amendments will help to ensure that all compliance plans are reviewed in a fair and equitable manner, will assist manufacturers in their efforts to develop approvable compliance plans, and will allow ARB staff to monitor the progress of industry in meeting the HVOC and MVOC standards.

3. Additional Modifications to the Antiperspirant and Deodorant Regulation.

In addition to the modifications described above, ARB staff is proposing several other modifications to the antiperspirant and deodorant regulation. These modifications are designed to provide clarification and to achieve consistency between the language of the antiperspirant and deodorant regulation and the consumer products regulation. Staff is also proposing modifications to the administrative requirements and test methods sections to clarify that the regulation prohibits removing date code information from products, and prohibits falsifying or modifying production records to contain inaccurate information. Other modifications include a change to the variance section to allow variance periods of greater than one year, and a modification to the standards section which commits the Board to a public hearing by July 1, 1997, to review and consider any appropriate modifications to the January 1, 1999 zero HVOC limits for aerosol antiperspirant and deodorant products.

4. Modifications to the Definitions for "VOC" in the Antiperspirant and Deodorant Regulation, the Consumer Products Regulation, and the Aerosol Coatings Regulation.

ARB staff is proposing to modify the VOC definition in these three regulations to make the ARB VOC definition more consistent with the U.S. EPA definition. In a recently finalized action, the U.S. EPA determined that linear, branched, or cyclic fully methylated siloxanes ("volatile methyl siloxanes" or "VMS"), parachlorobenzotrifluoride (PCBTF), and acetone are "negligibly photochemically reactive" and could provide beneficial alternative formulations for manufacturers seeking to meet VOC controls in states subject to ozone attainment requirements. The ARB staff has completed an analysis of the impact of exempting VMS and PCBTF and agrees with the U.S. EPA findings for VMS and PCBTF. ARB staff is therefore proposing to exempt these two compounds in recognition of their negligible contribution to ozone formation in California. However, because the U.S. EPA did not issue the final rule for acetone until June 16, 1995, the ARB staff has not yet been able to complete the technical analysis for acetone. A detailed technical analysis for acetone, specific to California conditions, is currently being conducted and will be completed by September 1995. ARB staff will present the conclusion of this analysis at the September 28, 1995 Board hearing and at that time will recommend appropriate action regarding a regulatory exemption for acetone.

Comparable Federal Regulations

There are no existing comparable federal regulations or statutes that regulate VOC emissions from antiperspirants and deodorants, consumer products, or aerosol coatings. However, the U.S. EPA may promulgate similar regulations sometime in the future pursuant to section 183(e)(3) of the federal Clean Air Act Amendments of 1990 [42 U.S.C. 7511b(e)(3)].

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action which includes a summary of the environmental and economic impacts of the proposal and technical support documentation. Copies of the ISOR may be obtained from the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing. The ISOR contains the full text of the proposed action. The staff has also compiled a record which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified immediately below. The ARB has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation; however, a plain English summary of the regulation is available from the agency contact person named in this notice, and is also contained in the ISOR for this regulatory action.

Further inquiries regarding this matter should be directed to Ms. Julie Billington, Ph.D., Associate Air Pollution Specialist, Technical Evaluation Section, Stationary Source Division, at (916) 327-1516.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government code section 11346.5(a)(6), to any state agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Executive Officer has determined that the proposed regulatory action will not have a significant adverse economic impact on the ability of California businesses to compete with businesses in other states, or on directly-affected private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed amendments should have minor or positive impacts on the creation or elimination of

jobs within the State of California, minor or positive impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minor or positive impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed amendments can be found in the ISOR.

As explained in the ISOR, it is possible that some individual businesses may be adversely affected by the proposed regulatory action due to increased competition, even though the overall economic impact of the proposed amendments will be positive. Therefore, the Executive Officer finds that the adoption of the proposed amendments may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation will affect small business.

Before taking final action on the proposed regulatory action, the ARB must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing. To be considered by the ARB, written submissions must be addressed to and received by the Board Secretary, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, or 2020 L Street, 5th Floor, Sacramento, CA 95814, no later than 12:00 noon, September 27, 1995, or received by the Board Secretary at the hearing.

The ARB requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND HEARING PROCEDURES

This regulatory action is proposed under the authority granted to the ARB in sections 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39600, 40000, 41511, and 41712 of the Health and Safety Code.

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Title 2, Division 3, Part 1, Chapter 3.5 (commencing with section 11340) of the Government Code. Following the public hearing, the ARB may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the modifications are sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD



for James D. Boyd
Executive Officer

Date: **August 1, 1995**