

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATIONS

The Air Resources Board (Board or 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 Consumer Products.

DATE: June 26, 2008

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two day meeting of the Board, which will commence at 9:00 a.m., June 26, 2008, and may continue at 8:30 a.m., June 27, 2008. This item may not be considered until June 27, 2008. Please consult the agenda for the meeting, which will be available at least 10 days before June 16, 2008, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disc. Please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94508, 94509, 94510, 94512, 94513, and 94515, title 17, California Code of Regulations.

Background:

Section 41712 of the California Health and Safety Code requires ARB to adopt regulations to achieve the maximum feasible reduction in VOC emissions from consumer products. As part of the regulatory process, ARB must determine that adequate data exist for it to adopt the regulations. 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. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be

adopted which requires the elimination of a product form. Section 41712 is primarily directed at attaining the State and federal ozone standards.

Pursuant to Health and Safety Code section 41712, ARB has adopted the Regulation for Reducing VOC Emissions from Consumer Products (the “Consumer Products Regulation;” title 17, CCR, sections 94507-94517.

On September 25, 2007, ARB adopted the State Strategy for California’s 2007 State Implementation Plan (2007 SIP). The 2007 SIP serves as California’s overall plan to provide the emission reductions necessary to meet the federal ozone standard of 0.08 parts per million averaged over eight hours. As part of the 2007 SIP, ARB has committed to an additional 30 to 40 ton per day VOC reduction from consumer products by 2014. Under the commitment, rulemakings are to occur in 2007 and 2008 with reductions occurring in the 2010 to 2012 timeframe. Further rulemakings between 2010 and 2012, with implementation dates between 2012 and 2014, are to complete the emission reduction commitment. Achieving additional VOC reductions from consumer products is an important element of the SIP and is necessary to attain State and federal air quality standards.

In 2006, Assembly Bill 32, The California Global Warming Solutions Act of 2006 (AB 32) was signed into law. This law created a comprehensive, multi-year program to reduce global warming compound emissions in California, with the overall goal of restoring emissions to 1990 levels by 2020. Assembly Bill 32 added section 1. division 25.5 (commencing with section 38500) to the Health and Safety Code.

Assembly Bill 32 additionally recognizes that immediate progress in reducing GHG emissions can and should be made. In October 2007, the ARB approved a list of early action GHG reduction measures. A subset of these early action measures was identified as Discrete Early Action Measures. Discrete Early Actions are Board adopted regulations to reduce GHG emissions, which are to be legally effective by January 1, 2010. One of the approved Discrete Early Action Measures, designated in the Early Action Report, pertains to reducing the use of compounds with high global warming potentials in consumer products. The consumer products measure is estimated to achieve an emission reduction equivalent to reducing 0.25 million metric tons of carbon dioxide per year.

Description of Proposed Regulatory Action

The proposed regulatory action would amend the existing Consumer Products Regulation by adding and modifying product category definitions and by establishing new or lower VOC limits for multiple categories. For some of the categories, separate VOC limits are specified for different product forms. All of these VOC limits, except one, are specified as percent by weight VOC. For one category, staff is proposing a grams of VOC per use limit. This mass limit is proposed for fabric softener products used in clothes dryers. An additional proposal would remove the “grandfather” clause that pertains to Personal Fragrance Products with 20 percent or less fragrance. Removing

this clause would require all Personal Fragrance Products with 20 percent or less fragrance to meet a single VOC limit. The new or modified VOC limits would become effective between December 31, 2010 and December 31, 2015. These amendments would partially fulfill the consumer products SIP commitment.

The proposed amendments would also reduce the use of compounds with high global warming potential in Pressurized Gas Duster products. These products could only use compounds with (GWP) factors below 150. As proposed, the GWP values used to determine compliance are those set forth in the Intergovernmental Panel on Climate Change, Second Assessment Report, or if applicable, the Fourth Assessment Report.

A modification to the definition of VOC is also being proposed. This modification would exclude hydrofluoroether 7200 from the definition based on its negligible impacts on ground-level ozone formation.

The proposed regulatory action would also prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene in Carpet/Upholstery Cleaner, Fabric Protectant, Multi-Purpose Lubricant, Penetrant, Sealant or Caulking Compound, and Spot Remover. Use of methylene chloride and perchloroethylene would also be prohibited in Pressurized Gas Dusters.

In addition, a number of other modifications or clarifications are proposed. These include modifications to product date-coding requirements, product “sell-through” provisions, requirements for dilutable products, reporting requirements, and additional labeling requirements for certain specified categories. A number of minor changes are also proposed to various provisions of the regulation in order to correct errors or improve clarity.

COMPARABLE FEDERAL REGULATIONS

The U.S. Environmental Protection Agency (U.S. EPA) has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act: *National Volatile Organic Compound Emission Standards for Consumer Products*. (40 CFR Part 59, subpart C, sections 59.201 *et seq.*) The rule specifies VOC limits for a number of consumer product categories, and is similar in format to ARB’s consumer products regulation. In the summer of 2006, U.S. EPA began work on amendments to their existing national consumer products rules. Their amendments are based on amendments to California’s Consumer Products Regulation that occurred in 2004. In that rulemaking, VOC limits for 15 categories were adopted. U.S. EPA’s amendments are expected to become effective on January 1, 2009.

Although the national regulation is similar in many aspects to the California regulation, it is less effective in reducing VOC emissions from consumer products. The U.S. EPA’s rule does not regulate a number of product categories that are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of ARB’s limits are more stringent than the U.S. EPA’s limits. The existing national

regulation achieves a 20 percent reduction in VOC emissions, while California's existing Consumer Products Regulation has already achieved a 50 percent emission reduction in the regulated categories. Because California has unique air quality problems, we must reduce VOC emissions from all categories, including consumer products, to the maximum extent feasible, to attain the federal and State ambient air quality standards for ozone.

The U.S. EPA's rule also differs in that it applies nationwide to consumer product manufacturers, importers and distributors (but not retailers), while the ARB regulation applies to any person (including retailers) who "sells, supplies, offers for sale, or manufactures consumer products for use in the State of California." Finally, the U.S. EPA's rule has an unlimited "sell-through" period for non-complying products manufactured before the effective date of the limits, whereas California law limits the sell-through period to three years.

U.S. EPA's consumer products rule also does not prohibit the use of certain toxic air contaminants. In aggregate, ARB's consumer products regulations have prohibited the use of certain chlorinated toxic air contaminants in 63 categories, resulting in emission reductions of 13 tons per day.

There is no comparable federal regulation related to reducing GHG emissions in consumer products.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes the rationale for the proposed amendments and a summary of the potential environmental and economic impacts of the proposal.

Copies of the ISOR and the full text of the proposed regulatory language, in strikeout/underline format to allow for comparison with the existing regulations, may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I Street, Visitor and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (May 9, 2008). These documents are also available on ARB's website listed below, or by contacting the agency contact persons listed below.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to Ms. Carla Takemoto, Manager, Technical Evaluation Section, Stationary Source Division, at (916) 324-8028, e-mail ctakemot@arb.ca.gov, or Mr. Olufemi Olaluwoye, Air Pollution Specialist, at (916) 327-1503, e-mail oolaluwo@arb.ca.gov

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011 or Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2008/cp2008/cp2008.htm>

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the ARB Executive Officer concerning the cost or savings necessarily incurred by public agencies and private persons and business in reasonable compliance with the proposed regulatory action are presented below.

The ARB Executive Officer has determined that the proposed regulatory action would not create costs or savings, as defined in Government Code section 11346.5(a)(5) and 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 costs or savings to state or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially determined that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action. As explained in the ISOR, the proposed amendments may have a significant adverse impact on some individual businesses but the overall statewide impacts are not expected to be significant.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has initially determined that the proposed amendments would have minimal impacts on the creation or elimination of jobs within the State of California, minimal impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minimal 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.

The Board's Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would affect small businesses.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of 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 at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received no later than **12:00 noon, June 25, 2008**, and addressed to the following:

Postal mail: Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to the ARB in sections 38501, 38510, 38560, 38560.5, 38562, 38580, 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 38501, 38510, 38560, 38560.5, 38562, 38580, 39600, 39601, 41511, and 41712 of the Health and Safety Code.

HEARING PROCEDURES

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 Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is 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 such event 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, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: 4-29-08

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our Web –site at www.arb.ca.gov.