

## 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 Emissions from Consumer Products, and Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products."

DATE: September 24, 2009

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District  
Auditorium  
21865 E. Copley Dr.  
Diamond Bar, California 91765

This item will be considered at a two day hearing of the Board, which will commence at 9:00 a.m., September 24, 2009, and may continue at 8:30 a.m., September 25, 2009. This item may not be considered until September 25, 2009. Please consult the agenda for the hearing, which will be available at least 10 days before September 24, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed amendments to sections 94508, 94509, 94510, 94511, 94512, 94513, and 94515, title 17, California Code of Regulations (CCR) and proposed amendments to Method 310, adopted September 25, 1997, as last amended May 5, 2005, which is incorporated by reference in section 94515, title 17, CCR, to add new sections 3.3.7, 4.3, 4.3.1, and 4.3.2.

### **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 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. The 2007 SIP anticipated that an additional 30 to 40 tons per day of VOC reductions will be achieved from consumer products statewide by January 1, 2014. The amendments approved by the Board at its June 26, 2008, hearing constitute the first 4.5 tons per day in meeting this target. Achieving additional VOC reductions from consumer products is an important element of the 2007 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. AB 32 creates a comprehensive, multi-year program to reduce greenhouse gas (GHG) emissions in California, and added Division 25.5 (commencing with §38500) to the Health and Safety Code. Among other things, AB 32 requires ARB to design and adopt a Scoping Plan, by January 1, 2009, that identifies how GHG emissions can be reduced to 1990 levels.

AB 32 also 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 emission reduction measures. A subset of these early action measures was identified as Discrete Early Action Measures. Discrete Early Action measures 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 is to reduce the use of compounds with high global warming potentials in consumer products. The goal of this measure is to achieve, at a minimum, an emissions reduction equivalent to reducing 0.25 million metric tons of carbon dioxide per year. The amendments approved at the June 26, 2008, hearing will provide about 0.23 million metric tons of CO<sub>2</sub> equivalents per year toward meeting the emission reduction target. The proposed amendments for this rulemaking will prevent the potential increased use of high global warming potential (GWP) compounds as products are reformulated to meet the new VOC limits for Double Phase Aerosol Air Freshener, Paint Thinner, and Multi-purpose Solvent products.

## 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 three categories: 1) Double Phase Aerosol Air Fresheners, 2) Multi-Purpose Solvents and 3) Paint Thinners. For Double Phase Aerosol Air Fresheners, Staff is proposing to reduce the VOC limit from 25 to 20 percent by weight effective December 31, 2012. For the Multi-purpose Solvent and Paint Thinner categories, we are proposing two tiers of VOC limits. For both categories, the first tier limit is 30 percent by weight effective December 31, 2010, and the proposed second tier limit is 3 percent by weight effective December 31, 2013. For all three categories, the proposed limits will achieve a total VOC reduction of 14.7 tons per day statewide by January 1, 2014. This represents a 54 percent reduction in emissions from these categories.

To ensure that the reductions achieved by the Discrete Early Action Measure for consumer products occur, and greenhouse gas emissions do not increase, the proposed amendments would also limit the use of compounds with high GWP in the three product categories for which VOC limits are being proposed. These products could only use compounds with GWP factors below 150. The GWP values to be used in determining compliance are those set forth in the Intergovernmental Panel on Climate Change, Second Assessment Report.

New definitions and modifications to existing definitions are also being proposed. New definitions include "Aromatic Compound," "Artist's Solvent/Thinner," "High Temperature Coating," "Industrial Maintenance Coating," "Paint Clean-up," and "Zinc-Rich Primer." These new definitions are necessary to clarify the proposed amendments with respect to the new paint thinner standards. Modified definitions include "ASTM," "Multi-purpose Solvent," and "Paint Thinner." The ASTM definition was changed to reflect the revised name of the organization that sets the ASTM methods. The Multi-purpose Solvent and Paint Thinner definitions were modified to clarify products which are exempt from, or included, in the categories and to improve enforcement of the regulation. In addition, there are size modifications in the definitions for both dilutable and pre-mixed Automotive Windshield Washer Fluids. The definitions now state that Dilutable Windshield Washer Fluids are sold in containers greater than 10 gallons or one quart or less, while Pre-mixed Automotive Windshield Washer Fluids are sold in containers greater than one quart but less than 10 gallons.

The proposed regulatory action specifies other requirements for Multi-purpose Solvents and Paint Thinners. One proposed requirement is to prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene. Another proposed requirement is to temporarily prohibit manufacturers of flammable or extremely flammable products from using generic product names such as "Multi-purpose Solvent," "Paint Thinner," or "Paint Clean-up." This prohibition is intended to address concerns about the potential change in flammability of Multi-purpose Solvents and Paint Thinners that could occur as a result of the proposed amendments. The

prohibition does not apply to products that either include a hang tag or sticker with the statement “Formulated to meet California VOC limits; see warnings on label,” or products which display the name of the chemical that results in the product meeting criteria for “flammable” or “extremely flammable,” such as “Acetone” in a font size at least as large as any other words on the principle display panel. This prohibition would be effective December 31, 2010 through December 31, 2015. In addition, to enhance enforceability, Staff is proposing that the total VOC content within the product formulation must be clearly displayed on the product container. Further, Staff is proposing to limit the aromatic compound content in these categories to address possible ozone forming potential increases and maximize air quality benefits. Finally, there are new proposed data reporting requirements for Multi-purpose Solvents and Paint Thinners, which are necessary for ARB staff to perform a technical assessment of the progress of reformulation efforts in advance of the second tier VOC limits.

The proposed changes to Method 310 are clarifications to specify analytical methods already being used and/or are needed to enhance the enforceability of the new, lower VOC limits that will become effective by 2010. The proposed changes also include new VOC content calculations for products with high water content or low VOC content.

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 (40 CFR Part 59, subpart C, §§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.

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. 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 70 categories, resulting in emission reductions of over 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 regulatory action, which includes the rationale for the proposed amendments and a summary of the potential environmental and economic impacts.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on September 24, 2009.

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 website listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to Mr. David Mallory, Manager, Measures Development Section, Stationary Source Division, at (916) 445-8316, or Ms. Trish Johnson, Air Pollution Specialist, at (916) 445-3365.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the 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's website for this rulemaking at [www.arb.ca.gov/regact/2009/cpmthd310/cpmthd310.htm](http://www.arb.ca.gov/regact/2009/cpmthd310/cpmthd310.htm)

## **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's 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 Executive Officer has determined that the proposed regulatory action will 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 cost 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 will 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 should 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 will affect small businesses.

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, 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**

Interested members of the public may present comments orally or in writing at the hearing, and may also be submitted by postal mail or by electronic submittal 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, September 23, 2009**, and addressed to the following:

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

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

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board 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 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 in sections 38501, 38510, 38560, 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, 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, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

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 and 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 ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene  
Executive Officer

Date: July 28, 2009

*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 website at [www.arb.ca.gov](http://www.arb.ca.gov).*