

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

PUBLIC HEARING TO CONSIDER THE ADOPTION OF A REGULATION TO
REDUCE SULFUR HEXAFLUORIDE EMISSIONS IN NON-SEMICONDUCTOR AND
NON-UTILITY APPLICATIONS

Public Hearing Date: February 26, 2009
Public Availability Date: July 27, 2009
Deadline for Public Comment: August 11, 2009

At its February 26, 2009, public hearing, the Air Resources Board (ARB or Board) approved the adoption of title 17, California Code of Regulations, sections 95340 through 95346. This regulation is a Discrete Early Action Greenhouse Gas (GHG) Emission Reduction Measure, as described in the California Global Warming Solutions Act of 2006 (Assembly Bill 32, (AB 32) Nuñez, ch. 486, stats. 2006), and will reduce emissions of sulfur hexafluoride from non-semiconductor and non-utility applications.

At the hearing, the staff presented, and the Board approved, the originally proposed regulation in the Staff Report released on January 6, 2009, with modifications as requested by the Department of Defense to phase out the use of military tracer gas at year 2020 and to create a new exemption for research, subject to appropriate conditions such as monitoring and reporting. Subsequent to the hearing, staff also identified other modifications that are set forth in more detail below.

Board Resolution 09-23 approved sections 95340 through 95346, as modified. The resolution and all other regulatory documents for this rulemaking are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2009/nonsemi09/nonsemi09.htm>

In accordance with Government Code, section 11346.8, the Board directed the Executive Officer to adopt title 17, California Code of Regulations, sections 95340 through 95346, with the modifications identified by the Board at the hearing, after making them available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Attachment 1 to this notice contains the text of California Code of Regulations, title 17, sections 95340 through 95346, which shows the proposed 15-day modifications to the originally proposed regulatory language. The modifications are shown in underline to

indicate additions to the original proposal and ~~strikeout~~ to indicate deletions. The rationale for the modifications to the regulation is set forth below.

Summary of Proposed Modifications to the Originally Proposed Text

- A. In section 95341(a), modifying the medical exemptions to include veterinary practices.

The regulation currently includes an exemption for medical applications. Section 95341 is being amended to include the use of sulfur hexafluoride in veterinary medicine.

- B. In section 95341(a), adding a date for Technical Specifications Task Force (TSTF) Specification 448.

Staff clarified the version of the Technical Specifications Task Force (TSTF) Specification 448 that the regulation refers to by adding the date of reference date of January 2007.

- C. In section 95341(a), adding an exemption for research purposes.

Staff added an exemption for use of sulfur hexafluoride in research applications. Research uses are hard to both define and anticipate and this exemption will allow researchers to utilize sulfur hexafluoride without the need to apply to ARB for an exemption. Research facilities must register with ARB and monitor and report the sulfur hexafluoride usage including the total quantity of sulfur hexafluoride purchased and used as well as the quantity used for each individual research activity and an explanation of each activity and any efforts undertaken to minimize emissions. The exemption is designed for quick access to sulfur hexafluoride for research where the use is necessary. Since alternatives for tracer gas applications and magnesium casting are available, these uses are not exempt for research purposes. The exemption is limited to accredited educational institutions and United States Government National Laboratories.

- D. In section 95341(b), modifying the exemption language to include possession of sulfur hexafluoride when there is no alternative.

Section 95341 is being amended to include an exemption method for possession of sulfur hexafluoride. This change is in response to a comment made during the 45-day comment period and will allow the exemption process to cover storage for an out-of-state use or other potential storage needs.

- E. In section 95342, adding definition of "Military Tracer Gas Array," "Research," "Research Facility," "Tracer ES&T Model 2600 Tracer Gas Analyzers," and "User," and modifying definition for "Military Applications."

Staff is adding the terms "Military Tracer Gas Array," "Research," "Research Facility," and "Tracer ES&T Model 2600 Tracer Gas Analyzers" in section 95342(a). These

terms are new terms that are being included for the exemption for research and the extended phase-out date for the military tracer gas array application. In addition, "User" is defined. The definition for military applications in section 95342 is being modified to remove unnecessary and redundant language.

F. In section 95343(b), including a phase-out date for the military tracer gas array application.

The regulation currently requires all military applications to be phased out by January 1, 2013. Section 95343(b) is being modified to include a separate phase-out date of January 1, 2020, for military use of sulfur hexafluoride in a tracer gas array application. The United States military needs this time to fully develop an alternative method and has stated that the tracer gas array application is of vital importance to national security.

G. In Section 95344, modifying enforcement provisions for consistency.

Section 95344(a) presently specifies that violations of this subarticle may subject a violator to revocation of an Executive Order, penalties prescribed by chapter 1.5 of part 5, division 26 of the Health and Safety Code commencing with section 42400, and/or the issuance of an injunction pursuant to section 41513 of the Health and Safety Code. For purposes of clarity this section has been segregated into three new sections that separately restate the revocation, penalty, and injunctive provisions.

New section 95344(a) specifies that penalties may be assessed for violations of this subarticle pursuant to Health and Safety Code section 38580, and that each day, during any portion of which a violation occurs, is a separate offense. Although this new section appears to specify different penalty provisions than those currently in section 95368(a), this is not the case, as explained below. Health and Safety Code section 38580(b)(1) states, in the pertinent part:

"[a]ny violation of any rule, regulation, order ... or other measure adopted by the [ARB] pursuant to [Division 25.5 of the Health and Safety Code] ... is subject to those penalties set forth in Article 3 (commencing with Section 42400) of Chapter 4 of Part 4 of, and Chapter 1.5 (commencing with Section 43025) of Part 5 of, Division 26."

Subsequent to the hearing, staff realized it would be more accurate to cite Health and Safety Code section 38580, because section 38580(b)(2) specifies that violations of AB 32 regulations ". . . shall be deemed to result in an emission of an air contaminant for the purposes of the penalty provisions of Article 3 (commencing with section 42400)." This provision alters the penalty structure set forth in article 3, and it is therefore more accurate and informative to cite Health and Safety Code section 38580, instead of the Health and Safety Code sections contained in article 3 (commencing with section 42400).

Sections 42400(e), 42400.1(c), 42400.2(d), 42400.3(d), 42402(d), 42402.1(c), 42402.2(c), and 42402.3(d) provide that “each day during any portion of which a violation ... occurs is a separate offense,” so the new section 95344 (a)(a) language stating that “each day during any portion of which a violation occurs is a separate offense” merely restates existing law.

New section 95344(b) restates the availability of injunctive relief pursuant to Health and Safety Code section 41513.

New section 95344(c) restates that the Executive Officer may revoke an Executive Order based on a violation of this subarticle.

New section 95344(d) is being added to maintain consistency with the language of other discrete early action greenhouse gas measures.

Current section 95344(b) is being removed to maintain consistency with other greenhouse gas measures.

H. In section 95345(d), adding reporting requirements for research facilities.

Staff added an exemption for use of sulfur hexafluoride in research applications in section 95341(a). Section 95345(d) adds requirements for the exempted research facilities to monitor and report the sulfur hexafluoride usage, including the total quantity of sulfur hexafluoride purchased and used, as well as the quantity used for each individual research activity and an explanation of each activity and any efforts undertaken to minimize emissions.

Written comments will only be accepted on the modifications approved by the Board and may be submitted by postal mail or electronic mail submittal as follows:

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.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette, or computer disk. For assistance, please contact the Clerk of the Board at (916) 322-5594 as soon as possible.

Attachment

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 ARB's website at www.arb.ca.gov.