

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: November 18, 2010

TIME: 9:00 a.m.

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

This item may be considered at a two day meeting of the Board, which will commence at 9:00 a.m., November 18, 2010, and may continue at 8:30 a.m., November 19, 2010. This item may not be considered until November 19, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before November 18, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94508, 94509, 94510, 94512, and 94515, title 17, California Code of Regulations and proposed amendments to Method 310, which is incorporated by reference in section 94515, title 17, CCR, to amend section 2.0 and add new subsections 3.3.8 and 4.2.3.

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. The Health and Safety Code further stipulates in section 41712(e) that public health agencies be consulted, and their

recommendations be considered, prior to adopting regulations for health benefit products. 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. As part of the 2007 SIP, ARB has committed to achieve an additional 30 to 40 tons per day of VOC emission reductions statewide from consumer products by January 1, 2014. In 2008 and 2009, the Board approved amendments to the Consumer Products Regulation to set new or lower VOC limits. These limits will result in 19.2 tons per day of VOC emission reductions once fully effective. Achieving additional VOC emission reductions from consumer products is an important element of the 2007 SIP and is necessary to attain State and federal air quality standards. This proposed rulemaking is the third increment toward meeting the 2007 SIP commitment. If the Board approves the amendments proposed in this rulemaking, total reductions toward the commitment would be about 26 tons per day.

Method 310 was adopted on September 25, 1997, and has been subsequently amended. Method 310 is used for compliance purposes to determine the VOC content of a consumer product and the presence of any compounds prohibited by ARB regulations.

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 a number of consumer product categories. The proposed VOC limits would result in VOC emission reductions of about 6.9 tons per day once fully effective.

Staff is proposing minor modifications to a number of existing definitions to clarify the types of products included or excluded in specific categories. Several new definitions are also proposed to describe additional product categories. A description of other proposals follows.

Staff is proposing to modify the definition of Artist's Solvent/Thinner to specify that an Artist's Solvent/Thinner is a product packaged in a container of 34 ounces or less. At present, Artist's Solvents/Thinners are defined as products packaged in containers equal to or less than 32 ounces. This change is being proposed because staff has determined that some Artist's Solvents/Thinners are commonly packaged in metric

units, (*i.e.* a liter, which is 33.8 ounces), rather than English units (*i.e.* a quart, which is 32 ounces).

Staff is proposing to modify the definition of Oven Cleaner to include grill cleaning products. As proposed, the newly added Oven or Grill Cleaner products would be given until December 31, 2012, to comply to allow the necessary time to reformulate. Staff is also proposing to increase the limit for nonaerosol Oven or Grill Cleaner products from 1 percent to 4 percent VOC by weight to accommodate use of noncaustic technologies. To expedite providing this alternative, the proposed limit revision would become effective on the date the amendments become legally effective. This change will result in a small emission increase of about 0.1 tons per day. However, emission reductions from the other categories included in this proposal will offset this small shortfall.

Staff is proposing to include spot remover products used on dry clean only fabrics into the currently regulated "Spot Remover" category. These are primarily products used at dry cleaning operations. To accommodate the necessary time for these products to reformulate, staff is also proposing to delay the effective date of the VOC limit for "Spot Remover" products from December 31, 2010, to December 31, 2012. The proposed change would result in delaying about a 0.25 ton per day VOC emission reduction for two years. The existing prohibition on use of methylene chloride, perchloroethylene, and trichloroethylene for "Spot Remover" products would also apply to the newly added products effective December 31, 2012.

Mitigation measures under the California Environmental Quality Act (CEQA) are also proposed for some categories. For the categories "Metal Polish or Cleanser," "Silicone-based Multi-purpose Lubricant," and "Special Purpose Lubricant" staff is proposing to prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene. These prohibitions are proposed to ensure that use of these toxic air contaminants does not occur as products are reformulated to meet the proposed VOC limits. The proposed prohibitions are contained in section 94509(m).

A second CEQA mitigation measure would prohibit the use of alkylphenol ethoxylate surfactants in "General Purpose Cleaner" (nonaerosol), "General Purpose Degreaser" (nonaerosol), "Glass Cleaner" (nonaerosol), "Heavy-duty Hand Cleaner or Soap" (nonaerosol) products, and "Oven or Grill Cleaner" products. These prohibitions are proposed to ensure that use of these compounds, which are known to be toxic to aquatic species, does not occur as products are reformulated to meet the proposed VOC limits. The proposed prohibitions are contained in section 94509(m).

A third proposed CEQA mitigation measure would prohibit use of compounds with global warming potential values of 150 or greater in "Flying Bug Insecticide," "Furniture Maintenance Product," "Metal Polish or Cleanser," "Special-purpose Lubricant," "Spot Remover," and "Wasp or Hornet Insecticide" products. These prohibitions are proposed to ensure that use of compounds with global warming potential (GWP) values greater than or equal to 150 does not occur as products are reformulated to the meet proposed VOC limits. The proposed prohibitions are contained in section 94509(n).

Currently, several subsections within section 94509 contain provisions prohibiting the use of several chlorinated toxic air contaminants. Staff is proposing to consolidate all of these requirements into two tables that would be contained in a single subsection. One table would include all of the categories where use of methylene chloride, perchloroethylene, and trichloroethylene is prohibited. A second table would include the categories where use of para-dichlorobenzene is prohibited. The modified subsection would also consolidate the provisions that specify sell-through dates and exemptions for impurities (except no exemption for impurities is provided for para-dichlorobenzene). The modifications are proposed to simplify the regulation and make it easier to find the requirements for all categories where these compounds are prohibited. The proposed consolidation of toxic air contaminant prohibitions would be contained in section 94509(m).

At present, several subsections in section 94509 contain prohibitions on the use of compounds that have GWP values of 150 or greater. Staff is proposing to consolidate these provisions into a single subsection. The modified subsection would also consolidate the provisions that specify sell-through dates and exemptions for impurities. The modifications are proposed to simplify the regulation and make it easier to find the limitations on use of compounds with higher GWP values. The proposed consolidation of GWP limits would be contained in section 94509(n).

Staff is proposing to amend the Most Restrictive Limit provision contained in section 94512(a) to clarify the regulation's applicability when two defined categories exclude each other within their definitions. As proposed, when a definition for a specific category excludes another specific category and *vice versa*, the product is subject to the VOC limit for whichever category is lower.

Along with the proposals to consolidate toxics prohibitions and GWP limits, other proposed modifications include deleting several subsections and renumbering remaining subsections.

We are also proposing to amend Test Method 310 to incorporate additional testing procedures and standard test methods to analyze consumer products for compliance. These modifications are proposed to specify the procedures to be used to analyze for the aromatic compound content in "Paint Thinner" and "Multi-purpose Solvent" products and the VOC content of "Fabric Softener-Single Use Dryer Product."

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, 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.

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 include 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 work to 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 noncomplying 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 does not prohibit the use of certain toxic air contaminants and there is no comparable federal regulation related to reducing greenhouse gas 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 of the proposal. The report is entitled: "Proposed Amendments to the California Regulation for Reducing Emissions from Consumer Products and Test Method 310: Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strike-out 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, Visitor and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, on September 29, 2010.

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 ARB's website 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; or Mr. Nicholas Berger, Air Pollution Specialist, at (916) 327-1516.

Further, the agency representative and designated back-up contact persons to whom non-substantive 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 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 website for this rulemaking at <http://www.arb.ca.gov/regact/2010/cp2010/cp2010.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 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 economic 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, the Board 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 than the proposed action.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **October 4, 2010**. To be considered by the Board, written submissions not physically submitted at the meeting must be submitted on or after **October 4, 2010**, and received no later than **12:00 noon, November 17, 2010**, 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>

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 available via Google, Yahoo, and 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 to the ARB 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, 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, First Floor, Sacramento, California 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these 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.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la

audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: September 21, 2010