

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATION PERTAINING TO AUTOMOTIVE WINDSHIELD WASHER FLUID PRODUCTS

The Air Resources Board (ARB or Board) 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 pertaining to Automotive Windshield Washer Fluid.

DATE: October 18, 2012

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 one-day meeting of the Board, which will commence at 9:00 a.m., October 18, 2012. Please consult the agenda for the hearing, which will be available at least 10 days before October 18, 2012, to determine the order in which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

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

Background:

Section 41712 of the California Health and Safety Code requires ARB to adopt regulations to achieve the maximum feasible reduction in volatile organic compound (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 ambient air quality standards for ozone.

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). The regulation has been amended numerous times to adopt VOC limits for over 100 different categories. These limits have reduced VOC emissions from consumer products by about 50 percent. Most recently, in November 2010, the Board approved and subsequently adopted new or lower VOC limits for 11 product categories. When fully effective, these amendments will result in VOC emissions reductions of about 7 tons per day. Most of these reductions will be realized at the end of 2012, with the remaining reductions occurring at the end of 2013.

Automotive Windshield Washer Fluid products were first regulated under "Phase I" of the consumer products regulation adopted in October of 1990. The regulation set VOC limits for Automotive Windshield Washer Fluid products based on areas where they are sold. At that time it was acknowledged that areas that experience freezing temperatures (termed Type "A" areas) during the winter months require products with higher VOC content to prevent the fluid from freezing. To address this need, the Board adopted a VOC limit of 35 percent by weight for Type "A" areas and a 10 percent by weight VOC limit for all other areas of the State. The limits became effective in 1993. Subsequent amendments lowered the VOC limit from 10 to 1 percent by weight for areas outside of Type "A," effective December 2002. In 2008, a 25 percent by weight VOC limit became effective that replaced the 35 percent by weight VOC limit for Type "A" areas. Overall, VOC emissions from Automotive Windshield Washer Fluid products have been reduced by over 25 tons per day.

Automotive Windshield Washer Fluid products are sold as both ready-to-use (premixed) products and dilutable concentrated products. Premixed products make up the majority of the market. In Type "A" areas premixed products can be sold with a VOC content of up to 25 percent by weight, while in all other areas of the State premixed products must contain no more than 1 percent by weight VOC. Dilutable products may be sold in all areas of the State as long as the product labels include clear dilution instructions for Type "A" and all other areas.

Objectives and Benefits:

In this rulemaking, ARB staff is proposing amendments to the provisions for Automotive Windshield Washer Fluid products. The amendments are designed to redefine Type "A" areas because the current description does not include some areas that routinely experience freezing temperatures in the winter. The areas proposed for addition are mountainous areas of the following counties: Butte, Fresno, Glenn, Humboldt, Kern, Madera, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tehama, Tulare, and Ventura. The proposed amendments would also include additional areas of Placer County to Type "A."

The effect of including these new areas in Type "A" would be to allow, but not require, the sale of premixed Automotive Windshield Washer Fluid with a VOC content of up to

25 percent by weight, rather than the current 1 percent by weight product. The higher VOC content is necessary to prevent the Automotive Windshield Washer Fluid from freezing in the vehicle reservoir or when the product is sprayed onto the windshield.

As proposed, the new areas would be described by ZIP codes within a county. Using ZIP codes is proposed because we believe they are easily understood and succinctly identify the areas proposed for addition to Type "A," while minimizing the emissions impacts. The amendments would also clarify the existing Type "A" areas by listing these areas by air basin and county.

In addition the proposed amendments would allow additional instructions for the consumer to be included on products that are diluted prior to use. As proposed, Responsible Parties may include, along with the currently required dilution instructions, language advising consumers to dilute the product for Type "A" areas if traveling to areas where freezing temperatures are expected.

Consumers should benefit from the proposed amendments by having access to Automotive Windshield Washer Fluid products that provide antifreeze protection, and by having clear language indicating that concentrated products can be diluted for Type "A" areas, regardless of their location, when freezing temperatures are expected.

Because premixed Automotive Windshield Washer Fluid with a 25 percent by weight VOC content could be sold in the areas proposed for addition to Type "A" areas, rather than 1 percent by weight VOC product, the proposed amendments would result in a small increase in VOC emissions. Staff estimates the statewide VOC emission increase to be about 0.12 tons per day. However, VOC limits adopted as part of the 2010 rulemaking for consumer products are scheduled to become effective at the end of 2012. The estimated statewide VOC reduction of 6.7 tons per day from these limits more than offsets the small increase in VOC emissions from this proposal. Thus, overall VOC emissions from consumer products will continue to decline.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

Staff does not believe the proposed amendments are inconsistent or incompatible with existing state regulations.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed amendments are not mandated by federal law or regulations.

COMPARABLE FEDERAL REGULATIONS

The United States 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 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. Such is the case for the Automotive Windshield Washer Fluid category. The national VOC limit is 35 percent by weight for all areas whether freezing temperatures exist or not. Because California has unique air quality problems, reducing VOC emissions from all categories, including consumer products, to the maximum extent feasible is necessary 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.

STATE IMPLEMENTATION PLAN REVISION

If adopted by ARB, ARB plans to submit the proposed regulatory action to the U.S. EPA for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intended to reduce emissions of air pollutants in order to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA pursuant to the CAA.

AVAILABILITY OF DOCUMENTS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Proposed Amendments to the California Regulation for Reducing Emissions from Consumer Products Pertaining to Automotive Windshield Washer Fluid."

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, on August 29, 2012.

FINAL STATEMENT OF REASONS AVAILABILITY

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

AGENCY CONTACT PERSONS

Inquiries concerning the substance of the proposed regulation may be directed to Mr. Jose Gomez, Manager, Technical Development Section, at (916) 324-8033, or Mr. Olufemi (Femi) Olaluyo, Technical Development Section, at (916) 327-1503.

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, at (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, at (916) 445-9564. The Board staff 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.

INTERNET ACCESS

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2012/cp2012/cp2012.htm>

FISCAL IMPACT

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Summary of Proposed Amendments

The amendments proposed in this rulemaking would modify and clarify provisions related to Automotive Windshield Washer Fluid products. The proposed amendments would add additional areas to Type "A," *i.e.*, those areas of the State that experience freezing temperatures where higher VOC ready-to-use (premixed) formulations of Automotive Windshield Washer Fluid could be sold. Clarifying language for dilutable products that Responsible Parties may include on product labels is also proposed. Because these proposed amendments allow, but do not require, businesses to sell higher VOC product into the newly identified Type "A" areas, or to include additional language on the product label, businesses do not need to incur additional compliance costs. Therefore, there is no additional economic impact.

DISCLOSURES REGARDING THE PROPOSED REGULATON

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings 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 Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The amendments would allow, but not require, the sale of higher VOC content Automotive Windshield Washer Fluid in additional areas of the State. Automotive Windshield Washer Fluid products are already sold in existing Type "A" areas that would be suitable for sale in the areas proposed for addition to Type "A." Therefore, no reformulation costs would be incurred to manufacture products for the newly identified areas. Businesses are also not required to modify their product labels. However, if businesses choose to modify product labels, we estimate a one-time cost of about \$165 per manufacturer, or a total one-time cost of about \$4,000. This estimated total cost includes those that would be incurred by small businesses for labeling modifications.

We also believe the cost to the consumer to be negligible because the higher VOC products appear to be comparably priced to the lower VOC content products currently sold. The proposed amendments are not expected to change the prices of Automotive Windshield Washer Fluid products.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

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.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SEC. 11346.3(b)

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Regulation

Consumers should benefit from the proposed amendments by having access to Automotive Windshield Washer Fluid products that provide antifreeze protection, and by having clear language indicating that concentrated products can be diluted for Type "A" areas, regardless of their location, when freezing temperatures are expected.

EFFECT ON SMALL BUSINESS

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. However, the amendments allow, but do not require, small businesses to offer for sale

higher VOC Automotive Windshield Washer Fluid in the areas proposed for addition to Type "A," or require labels on their dilutable products to be modified. For this reason, we expect all businesses, small or otherwise, to make a business decision as to whether to sell in the additional Type "A" areas or modify dilutable product labels. If manufacturers choose to modify dilutable product labels, the cost is estimated to be about \$165 per manufacturer.

ALTERNATIVES

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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

ENVIRONMENTAL ANALYSIS

In accordance with ARB's certified regulatory program, California Code of Regulations, title 17, sections 60006 through 60007, and the California Environmental Quality Act, Public Resources Code section 21080.5, ARB has conducted an analysis of the potential for significant adverse and beneficial environmental impacts associated with the proposed regulatory action. The environmental analysis of the proposed regulatory action can be found in Chapter IV of the ISOR.

SUBMITTAL OF COMMENTS AND WRITTEN COMMENT PERIOD

Interested members of the public may also present comments verbally 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 September 1, 2012. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after September 1, 2012, and received **no later than 12:00 noon on** October 17, 2012, and must be 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>

You can sign up online in advance to speak at the Board meeting when you submit an electronic board item comment. For more information go to:
<http://www.arb.ca.gov/board/online-signup.htm>.

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and verbal 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.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to 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.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

STATUTORY AUTHORITY AND REFERENCES

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

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 or another language; or
- 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 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: August 21, 2012

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.