

Second Notice of Public Availability of Modified Text

Proposed Amendments to the Antiperspirants and Deodorants Regulation; Consumer Products Regulation; Aerosol Coating Products Regulation; Alternative Control Plan Regulation; the Tables of Maximum Incremental Reactivity Values; and Test Method 310

Public Hearing Date: March 25, 2021
First Public Availability Date: August 19, 2021 – September 3, 2021
Second Public Availability Date: May 23, 2022
Deadline for Public Comment: June 7, 2022

At its March 25, 2021, public hearing, the California Air Resources Board (CARB or Board) approved for adoption the proposed amendments to sections 94501, 94502, 94506, 94508, 94509, 94510, 94511, 94513, 94515, 94521, 94522, 94524, 94526, 94540, 94541, 94542, 94543, 94544, 94545, 94546, 94547, 94548, 94549, 94550, 94551, 94552, 94553, 94554, 94555, 94700, Title 17, California Code of Regulations, and the proposed amendments to sections 1, 2, 3, 4, 5, 6, 8, and Appendix A of Method 310, which is incorporated by reference in California Code of Regulations, title 17, sections 94506, 94515, and 94526 (collectively, Proposed Amendments). These Proposed Amendments would amend the existing Antiperspirants and Deodorants Regulation; Consumer Products Regulation; Aerosol Coating Products Regulation; Alternative Control Plan Regulation; the Tables of Maximum Incremental Reactivity Values; and Test Method 310 (Proposed Amendments) to, among other things, lower the Volatile Organic Compounds (VOC) standards for certain product categories, sunset the two percent fragrance exemption, and update the Innovative Product Exemption (IPE) provisions.

The Board approved the adoption of the Proposed Amendments and directed the Executive Officer to make the modified regulatory language, and any additional conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days, as required by Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days, and to present the regulation to the Board for further consideration if warranted or take final action to adopt the regulation after addressing all appropriate modifications.

Consistent with Board direction, CARB staff developed modified regulatory text and released it in a first 15-Day Notice on August 19, 2021. CARB staff is proposing additional modifications as described in this second 15-Day Notice.

The resolution and all other regulatory documents for this rulemaking are available online at the following *CARB website*: <https://ww2.arb.ca.gov/rulemaking/2021/consumerproducts2021>.

The text of the modified regulatory language is shown in Attachment A. The originally proposed regulatory language is shown in ~~striketrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that were made public with the first 15-day notice are shown in ~~double striketrough~~ and double underline format, respectively. New deletions and additions to the proposed language that are made public with this notice are shown in ~~bold italic double striketrough~~ and **italic double underline format**, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in Modifications to the Proposed Regulatory Order (Attachment A).

Summary of Proposed Modifications

CARB staff's proposed modifications to the Proposed Amendments' regulatory text in sections 94506 and 94515, Title 17, California Code of Regulations,¹ as well as to Method 310, incorporated by reference in sections 94506 and 94515, are summarized below and attached to this notice, entitled "Proposed Second 15-Day Changes to the Proposed Amendments to the Antiperspirants and Deodorants Regulation; Consumer Products Regulation; Aerosol Coating Products Regulation; Alternative Control Plan Regulation; the Tables of Maximum Incremental Reactivity Values; and Test Method 310" (Attachment A). The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

1. Modifications to Subsection 3.4.2 in Sections 94506, 94515, and Method 310

Section 94506, 94515 and Method 310 all contain the same language that currently says the Executive Officer "will" request the responsible party to supply product formulation data if the results obtained under section 3.4.1 show the product does not meet the applicable VOC standard. In the 45-day Notice, CARB proposed to change the word "will" to "may." This change was proposed to reflect CARB's enforcement discretion and CARB practice, as well as to reduce the burden on the regulated community by not automatically requiring product formulations be sent in every case. CARB is now also proposing to add "to confirm compliance with the applicable VOC standard" after the words "supply product formulation data," so the regulated community understands for what reason CARB would decide to request the formulation data. This addition is necessary for clarity. Further, CARB is proposing to remove

¹ All subsequent section references are to Title 17, California Code of Regulations unless otherwise noted.

the “to” before “supply product formulation data” to make the sentence grammatically correct.

2. Modifications to Subsection 3.4.3 in Sections 94506, 94515, and Method 310

Section 94506, 94515 and Method 310 all contain the same language that currently says that the Executive Officer “will” take appropriate enforcement action if the product does not meet the applicable VOC standard. In the 45-day Notice, CARB proposed to change the word “will” to “may.” CARB is proposing to revert back to “will,” as it is unnecessary to make the switch, because the word “appropriate” already reflects the fact that CARB has broad enforcement discretion. Appropriate enforcement action could include investigation, issuance of a notice of violation, and taking no action, among various other actions. Enforcement is case-by-case. Therefore, a switch to the word “may” is not necessary and, therefore, the switch back to “will” is necessary to comply with the necessity standard.

3. Modifications to Method 310, Section 5.4.2

Section 5.4.2 of Method 310 contains the same language identified in section one above, which currently says the Executive Officer “will” request the responsible party to supply product formulation data if the results obtained under section 5.4.1 show the product does not meet the applicable limit. In the 45-day Notice, CARB proposed to change the word “will” to “may” to reflect CARB’s enforcement discretion and CARB practice, as well as to reduce the burden on the regulated community caused by automatically requiring product formulation data be sent in every case. CARB is now proposing to add “reactivity” before the word “limits” and “to confirm compliance with the applicable reactivity standard” after the words “supply product formulation data,” so the regulated community understands which specific type of limits are addressed by this subsection, and for what reason CARB would decide to request the formulation data. This addition is necessary for clarity. Further, CARB is proposing to remove the “to” before “supply product formulation data” to make the sentence grammatically correct.

4. Modifications to Method 310, Section 5.4.3

Section 5.4.3 of Method 310 contains the same language that currently says the Executive Officer “will” take appropriate enforcement action if the product does not meet the applicable VOC standard. In the 45-day Notice, CARB proposed to change the word “will” to “may.” CARB is now proposing to revert back to “will,” as it is unnecessary to make the switch because the word “appropriate” already reflects the fact that CARB has broad enforcement discretion. Appropriate enforcement action could include investigation, issuance of a notice of violation, and taking no action, among various other actions. Enforcement is case-by-case. Therefore, a switch to the word “may” is not necessary and, therefore, the switch back to “will” is necessary to comply with the necessity standard.

In addition to the modifications described above, additional modifications correcting grammar, punctuation and spelling have been made throughout the proposed changes. These changes are nonsubstantive.

Environmental Analysis

These proposed modifications do not change implementation of the Proposed Amendments in any way that affects the conclusions of the environmental analysis included in the Initial

Statement of Reasons (ISOR). The proposed modifications consist primarily of minor language changes to ensure clarity of aspects of the rulemaking. The proposed modifications do not alter the compliance responses already disclosed and continue to be within the scope of the 2016 State SIP Strategy's Final Environmental Analysis (EA) for the same reasons provided in the ISOR and, therefore, do not require any further environmental analysis beyond the environmental determination provided in the ISOR. Therefore, no recirculation of the EA is required.

Update to Staff Report: Initial Statement of Reasons (ISOR) (Date of Release: February 2, 2021)

This notice updates the following sections in Chapter IV of the ISOR, entitled Purpose and Rationale for Each Regulatory Provision:

- Pages IV-98-99, IV-142-143, and IV-182-84: Updates to the purpose and rationale in the ISOR for Subsection 3.4.2 in Sections 94506, 94515, and Method 310 are updated to add the necessity rationale. Specifically, subsection 3.4.2 is proposed to say, "If the Executive Officer determines, based on testing, information they may receive from the responsible party, and any other applicable evidence, that the product does not comply with the applicable VOC standard, the Executive Officer will take appropriate enforcement action." The term "applicable evidence" is used because CARB has broad enforcement discretion to consider all relevant factors in determining what enforcement action to take and cannot provide an exhaustive list in the regulation. Instead, CARB has provided some examples of what can be considered applicable evidence—testing, information received from the responsible party—and then a related catchall term of "applicable evidence" that reflects CARB's broad enforcement discretion to consider any relevant evidence when deciding whether to exercise its enforcement discretion.
- Page IV-137: Updates to the purpose and rationale in the ISOR adds the necessity rationale for the requirement that responsible parties make their records available within ten business days of CARB's request. The ten-day requirement (as opposed to another timeframe) is necessary because it balances CARB's need to receive the documents in a timely manner with the regulated community's time to gather and mail the documents (which they already have). It also aligns with record submission timeframes in other regulations.
- Pages IV-145-IV-146: Updates to the purpose and rationale in the ISOR for Subsection 3.5.2 are necessary to correct a typo. CARB specified in the sentence "Replacing "will **will** "shall" in the final sentence of subsection 3.5.2 makes it more clear that this is mandatory and not just a description of what is done." CARB meant to write "with" where the second will is double underlined and bolded. In regards to Subsections 3.6 and 3.6.1, the switch from "will" to "may" was necessary to align with CARB's broad enforcement discretion. Use of the word "will" alone put a requirement on CARB to make a request automatically. Requesting information is part of CARB's broad enforcement authority but also part of its broad enforcement discretion. Use of the word "may" better aligns with the authority and discretion. Similar to when CARB takes enforcement action, each instance in which CARB will request documents is case-by-case.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Liang Liu, Manager, Implementation Section, at liang.liu@arb.ca.gov or Josh Berghouse, Air Pollution Specialist, Implementation Section, at josh.berghouse@arb.ca.gov.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than the due date to the following:

Postal mail: Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <https://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 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.

In order to be considered by the Executive Officer, comments must be directed to CARB in one of the two forms described above and received by CARB no later than 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.

If you need this document in an alternate format or another language, please contact the Clerks' Office at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

California Air Resources Board



Edie Chang
Deputy Executive Officer

Date: May 23, 2022

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 [CARB's website](http://www.arb.ca.gov) (www.arb.ca.gov).