

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM ANTIPERSPIRANTS AND DEODORANTS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of proposed amendments to the Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Antiperspirants and Deodorants (Antiperspirant and Deodorant Regulation).

DATE: October 26, 2000

TIME: 9:30 a.m.

PLACE: Santa Barbara County Board of Supervisors
Board Hearing Room Fourth Floor
105 East Anapamu Street
Santa Barbara, California 93101

This item will be considered at a two-day meeting of the ARB, which will commence at 9:30 a.m., October 26, 2000, and may continue at 8:30 a.m., October 27, 2000, if necessary. This item may not be considered until October 27, 2000. Please consult the agenda for the meeting, which will be available at least 10 days before October 26, 2000, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact the ARB's Clerk of the Board by October 16, 2000, at (916) 322-5594, or Telecommunications Device for the Deaf (TDD) at (916) 324-9531, or (800) 700-8326 for TDD calls outside the Sacramento area, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94502 and 94504, title 17, California Code of Regulations (CCR).

Background

Section 41712 of the Health and Safety Code requires the ARB to adopt regulations to achieve the maximum feasible reduction in VOC emissions from consumer products. As part of the regulatory process, the ARB must determine that adequate data exist for it to adopt the regulations. The 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.

On November 8, 1989, the Antiperspirant and Deodorant Regulation, sections 94500 – 94506.5, title 17, CCR, became the first regulation to be approved by the ARB under its authority to control consumer product emissions. The regulation became legally effective on February 27, 1991, and contains VOC standards based on vapor pressure for both aerosol and non-aerosol antiperspirants and deodorants. Under these standards, high volatility organic compounds (HVOCs) are regulated separately from medium volatility organic compounds (MVOCs). Zero percent HVOC limits were established for aerosol antiperspirants and deodorants, effective January 1, 1995. Because HVOCs are the propellants used in aerosol products, these limits essentially required manufacturers to use non-VOC propellants. However, the Board recognized the technological challenge of the zero percent HVOC limits, and allowed manufacturers additional time beyond 1995 to comply, provided manufacturers submitted a “compliance plan” documenting their efforts to develop complying aerosol products no later than January 1, 1999.

In 1995, the Board approved amendments to the regulation that established “interim” HVOC limits of 40 percent and 14 percent for aerosol antiperspirants and deodorants, respectively (the “40/14” limits). These limits became effective on January 1, 1997, and applied only to manufacturers operating under approved compliance plans.

In the fall of 1998, aerosol antiperspirant manufacturers notified ARB staff of unanticipated technological problems with achieving the zero percent HVOC limit for aerosol antiperspirants. A chemical reaction was occurring between the non-VOC propellant HFC-152a and the antiperspirant active ingredient aluminum chlorohydrate. As a result, five manufacturers applied for and received variances from compliance with the zero percent HVOC limit. These variances will expire on January 1, 2001. During the variance period, manufacturers have been required to sell 40 percent HVOC aerosol antiperspirants. However, despite diligent efforts, and exploring all feasible avenues to overcome the problem, it has not been solved. No manufacturer has been able to successfully formulate a zero percent HVOC aerosol antiperspirant, and such products are not currently being sold in California. Therefore, at this time, amendments to revise the limit for aerosol antiperspirants are being proposed.

Description of the Proposed Regulatory Action

Staff is proposing to increase the HVOC limit for aerosol antiperspirants to 40 percent from the current zero percent limit, beginning January 1, 2001. The MVOC limit of 10 percent would be unchanged.

Increasing the HVOC limit would result in a 1.3 tons per day increase in VOC emissions statewide in 2010, as compared to the emission reductions that would have been achieved from the zero percent HVOC limit. However, staff believes the proposed limit change is necessary to allow technologically and commercially feasible aerosol antiperspirants to continue to be available to California consumers.

Staff is also proposing to modify section 94502(d), (“Special Requirements for Aerosol Manufacturers”) to clarify that these requirements apply only to aerosol products manufactured before January 1, 1999. This subsection specifies the criteria that must be met by aerosol manufacturers to receive additional time to comply with the January 1, 1995, limits. Manufacturers that met these criteria were given until January 1, 1999, to comply.

Finally, staff is proposing to modify the reporting requirements set forth in section 94504(b). At present, all manufacturers of antiperspirant and deodorant products are required to submit annual reports on sales and formulations. To streamline the regulation, staff is proposing to eliminate the annual reporting requirements, and to instead require that manufacturers would need to submit data for their antiperspirant and deodorant products only upon receipt of a 90-day written notice from the ARB. This proposal is consistent with other consumer product regulations. In addition, the proposal would change somewhat the type of formulation information that manufacturers must report to the ARB.

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: *National Volatile Organic Compound Emission Standards for Consumer Products* (40 CFR Part 59, subpart C, sections 59.201 et seq.; see the September 11, 1998, *Federal Register*, Vol. 63, No. 176, pages 48819-48847). The rule specifies VOC limits for a number of consumer product categories, including aerosol antiperspirants and deodorants. The effective date for all categories in the U.S. EPA’s rule was December 10, 1998. In the U.S. EPA’s rule, however, the limits for aerosol antiperspirants and deodorants are less stringent than even the interim limits (i.e., the 40/14 limits) specified in the ARB’s Antiperspirant and Deodorant Regulation. There are other significant differences between the U.S. EPA’s rule and ARB regulations. The U.S. EPA’s rule applies nationwide to consumer product manufacturers, importers and distributors (but not retailers), while the ARB Antiperspirant and Deodorant Regulation applies to any person (including retailers) who sells, supplies, offers for sale, or manufactures antiperspirant or deodorant products for use in California. The U.S. EPA’s rule also has an unlimited sell-through period for noncomplying products manufactured before the effective date of the limits, whereas California law allows a three-year sell-through period. Also, the U.S. EPA’s rule does not specifically impose restrictions on the use of toxic air contaminants in antiperspirants or deodorants.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSON

The ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory action that includes a summary of the environmental and economic impacts of the proposal and supporting technical documentation. Copies of the ISOR may be obtained from the ARB's Public Information Office, 2020 L Street, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (October 26, 2000). The ISOR contains the full text of the proposed action. The staff has also compiled a record that includes all information upon which the proposal is based. This material is available for inspection upon request to the agency contact person identified below.

The ARB staff has determined that it is not feasible to draft the regulation in plain English due to the technical nature of the regulation. However, a plain English summary of the regulation is available from the agency contact person named in this notice, and is also contained in the ISOR for this regulatory action.

To obtain the ISOR in an alternate format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916 TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento Area. This notice, the ISOR, and subsequent regulatory documents will also be available on the ARB's Internet site for this rulemaking at:
<http://www.arb.ca.gov/regact/conspro/00apdo/00apdo.htm>.

Further inquiries regarding this matter should be directed to the agency contact person for this rulemaking, Ms. Carla Takemoto, Manager, Technical Evaluation Section, Stationary Source Division, (916) 322-8283.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulatory action are presented below.

The Executive Officer has determined that the proposed regulation action will not create costs or savings, as defined in Government Code section 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 costs or savings to local agencies.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on private persons and businesses. The Executive Officer has determined that the proposed regulatory action should have an overall positive economic impact. The Executive Officer has also determined that the proposed regulatory action will not have a significant

adverse economic impact on the ability of California businesses to compete with businesses in other states, or on directly affected private persons. This is because the proposed amendments would lower compliance costs compared to the costs to comply with the existing regulation.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed amendments should have minor or positive impacts on the creation or elimination of jobs within the State of California, minor or positive impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minor or positive 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 Government Code section 11346.5(a)(3)(B), that the regulations will affect small business.

Before taking final action on the proposed regulatory action, the ARB must determine that no alternative considered by the agency 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

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the ARB, written submissions must be addressed to and received by the Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, California 95812, or 2020 L Street, 4th Floor, Sacramento, California 95814, no later than 12:00 noon, October 25, 2000, or received by the Clerk of the Board at the hearing. To be considered by the ARB, e-mail submissions must be addressed to 00apdo@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon, October 25, 2000.

The ARB requests, but does not require, 30 copies of any written submission. Also, the ARB requests that written and e-mail 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 ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is under the authority granted to the ARB in sections 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39600, 40000, 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 ARB may adopt the regulatory language as originally proposed or with nonsubstantial or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the modifications are 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 the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written notice 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, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

MICHAEL P. KENNY
EXECUTIVE OFFICER

Date: August 29, 2000