

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATION RELATING TO AEROSOL ADHESIVES

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 California consumer products regulation (title 17, California Code of Regulations, sections 94508 et seq.) relating to aerosol adhesives:

DATE: May 25, 2000

TIME: 9:30 a.m.

PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a two-day meeting of the ARB, which will commence at 9:30 a.m., May 25, 2000, and may continue at 8:30 a.m., on May 26, 2000. This item may not be considered until May 26, 2000. Please consult the agenda for the meeting, which will be available at least 10 days before May 25, 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 ARB's Clerk of the Board by May 15, 2000, at (916) 322-5594, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area, to ensure accommodation.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94508, 94509, 94512, and 94513, title 17, California Code of Regulations (CCR).

Background

Section 41712 of the California Health and Safety Code requires the 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, 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.

Pursuant to Health and Safety Code section 41712, the Board has adopted the California consumer products regulation (sections 94507-94517, title 17, CCR). The regulation includes VOC standards for aerosol adhesives, which were originally approved by the Board on January 9, 1992. The original standards specified two tiers of VOC limits for aerosol adhesives: a VOC limit of 75 percent by weight, effective January 1, 1995, and a VOC limit of 25 percent by weight, effective January 1, 1997. In November of 1996, the Board approved a delay in the implementation of the 25 percent VOC limit until 1/1/2002, in order to ensure that technologically and commercially feasible products would continue to be available.

In 1996 the Legislature enacted Assembly Bill (AB) 1849 (Stats. 1996, Chapter 766) which made several changes to Health and Safety Code section 41712. One of these changes specified that the Board's existing 75 percent VOC standard for aerosol adhesives would apply, effective January 1, 1997, to all uses of aerosol adhesives, including consumer, industrial, and commercial uses (see Health and Safety Code section 41712(h)(2)). AB 1849 also requires the ARB, on or before July 1, 2000, to prepare a study and conduct a public hearing on the need for, and the feasibility of, establishing a more stringent standard or standards for aerosol adhesives (see Health and Safety Code section 41712(h)(3)). If the ARB finds that more stringent limits for aerosol adhesives are expected to become feasible, the ARB is required to adopt a standard or standards to implement more stringent VOC limits.

Description of the Proposed Regulatory Action

As required by Health and Safety Code section 41712(h)(3), the ARB staff has conducted a technology assessment, and has determined that VOC limits more stringent than the currently specified 75 percent limit are feasible for aerosol adhesives. Staff has also determined that the 25 percent VOC limit, which is to become effective on January 1, 2002, is not technologically or commercially feasible. Therefore, the proposed regulatory action would eliminate the 25 percent VOC limit. The proposed action would also establish new VOC limits for three new categories of aerosol adhesives.

The three new categories are "mist spray adhesives," "web spray adhesives," and "special purpose spray adhesives." The "special purpose spray adhesives" are further subcategorized into six subgroups. The three main categories and six subgroups were proposed to maintain the unique performance properties of these aerosol adhesive products, while lowering their VOC content to the maximum extent feasible. Different VOC limits are proposed for "mist spray adhesives" and "web spray adhesives," and three different VOC limits are proposed for the various subgroups within the "special purpose spray adhesives" category. ARB staff believes that these VOC limits represent the most stringent VOC limits that are technologically and commercially feasible at this time, based on the current knowledge of aerosol adhesives technologies.

The proposed regulatory action would also include labeling and other requirements to facilitate compliance and enforcement of the new standards. In addition, reporting requirements would be

imposed on responsible parties, who would be required to report various types of product information to support a future technology assessment that would be conducted by ARB staff.

Effective January 1, 2002, the proposed regulatory action also prohibits the use of methylene chloride, perchloroethylene, and trichloroethylene, which are toxic air contaminants, in aerosol adhesives manufactured for use in California. Finally, the proposed amendments would revise various definitions related to aerosol adhesives, and make other minor modifications to the consumer products regulation to allow incorporation of the proposed amendments and provide clarity.

Because the proposed amendments would eliminate the future effective 25 percent VOC standard and replace it with several new standards that are less stringent, the result would be that statewide, about 1 ton per day (TPD) of future emission reductions would not be achieved. However, it should also be noted that manufacturers would still need to reduce the VOC content of most of the products they currently sell in order to meet the proposed January 1, 2002, VOC limits. Staff estimates that the proposed new VOC limits would achieve about 0.2 TPD reduction in VOC emissions relative to the currently effective 75 percent VOC limit for aerosol adhesives. Also, the proposed toxics prohibition would reduce methylene chloride emissions by 18 tons per year (TPY), and perchloroethylene and trichloroethylene emissions by about 0.5 TPY combined.

Comparable Federal Regulations

The 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 adhesives. In the U.S. EPA's rule, there is only one VOC standard for aerosol adhesives, which is 75 percent by weight, effective December 10, 1998. There are other significant differences between the U.S. EPA's rule and the ARB consumer products regulation. The U.S. EPA's rule 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." The U.S. EPA's rule does not regulate a number of product categories, which are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of the ARB's limits (such as the aerosol adhesives limit) are more stringent than the U.S. EPA's limits. All of the VOC limits in the U.S. EPA's rule have an effective date of December 10, 1998, whereas the VOC limits in the ARB regulation are phased-in from 1993 to 2005. 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 allows a three year sell-through period. Also, the U.S. EPA's rule does not specifically impose restrictions on the use of toxic compounds in consumer products.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSON

The ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed regulatory

action which 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 (May 25, 2000). The ISOR contains the full text of the proposed amendments. The staff has also compiled a record, which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact person identified below.

The ARB 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 alternative format, please contact the Air Resources Board ADA Coordinator at (916) 322-4505, TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento Area. This notice, the ISOR, and all subsequent regulatory documents are being made available on the ARB Internet site on this rulemaking, <http://www.arb.ca.gov/regact/conspro/conspro.htm>. Further inquiries regarding this matter should be directed to the agency contact person: Mr. Gary Yee, Manager, Industrial Section, Stationary Source Division, at (916) 327-5986.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the cost or savings necessarily incurred 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)(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 will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, or on private persons or businesses directly affected. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed amendments should have minor impacts on the creation or elimination of jobs within the State of California, minor impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minor 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.

As explained in the ISOR, under the proposed amendments manufacturers would have to meet

less stringent standards than are currently scheduled to take effect. Therefore, the proposed amendments would result in an overall cost savings to affected businesses. However, it should be noted that some manufacturers would incur costs to reformulate their existing products to meet the proposed VOC limits for the three aerosol adhesive categories, relative to the VOC levels of products that are currently being sold. Staff evaluated these costs and determined that manufacturers will be able to absorb the added costs of the proposed amendments without an adverse impact on their profitability.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation 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, CA 95812, or 2020 L Street, 4th Floor, Sacramento, CA 95814, no later than 12:00 noon Pacific Time May 24, 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 aeroadh@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon Pacific Time, May 24, 2000.

The ARB requests, but does not require, that 30 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 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 proposed under the authority granted to the ARB in sections 39600, 39601, 39658, 39666, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39600, 39650, 39655, 39656, 39658, 39659, 39666, 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 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: