

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 AEROSOL COATING PRODUCTS AND PROPOSED TABLES OF MAXIMUM INCREMENTAL REACTIVITY (MIR) VALUES, AND ADOPTION OF PROPOSED AMENDMENTS TO METHOD 310, "DETERMINATION OF VOLATILE ORGANIC COMPOUNDS IN CONSUMER PRODUCTS"

The Air Resources Board (ARB) 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 Aerosol Coating Products and Proposed Tables of Maximum Incremental Reactivity (MIR) Values, and the adoption of proposed amendments to ARB Method 310, "Determination of Volatile Organic Compounds in Consumer Products."

DATE: June 22, 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., June 22, 2000, and may continue at 8:30 a.m., June 23, 2000. This item may not be considered until June 23, 2000. Please consult the agenda for the meeting, which will be available at least 10 days before June 22, 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 June 12, 2000, at (916) 322-5594, or TDD (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 94521-94524, and 94526, title 17, California Code of Regulations (CCR); proposed adoption of new Subchapter 8.6, sections 94700 and 94701, title 17, CCR; and proposed amendments to ARB Method 310, which is incorporated by reference in section 94526, title 17, CCR.

Background

Health and Safety Code section 41712(i) requires the ARB, on or before January 1, 1995, to adopt a regulation that achieves the maximum feasible reduction in VOCs emitted from the use of aerosol paints (aerosol coatings). To fulfill this statutory directive, in March 1995 the ARB adopted a regulation establishing two tiers of VOC limits for 35 categories of aerosol coatings (Aerosol Coatings Regulation). The first tier became effective on January 8, 1996, and the second tier was scheduled to become effective on December 31, 1999.

Health and Safety Code section 41712(i)(3) also requires the ARB, on or before December 31, 1998, to conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the 1999 limits. On November 19, 1998, the ARB conducted a public hearing and determined that some of the 1999 second tier limits were not technologically and commercially feasible, and also determined that some of the 1999 second tier limits did not represent the most stringent feasible VOC limits. Therefore, at the hearing the ARB adopted less stringent VOC limits for 23 aerosol coating product categories and more stringent VOC limits for 12 aerosol coating product categories. The Board also extended the effective date of the limits to January 1, 2002.

Description of the Proposed Regulatory Action

ARB staff is proposing the following regulatory actions for Board approval:

1. Amend the Aerosol Coating Regulation by replacing the second tier VOC limits for 35 product categories with equivalent reactivity-based limits.

At its November 19, 1998, hearing the ARB adopted VOC limits that become effective on January 1, 2002. At that hearing, the Board also directed staff to return with a voluntary alternative reactivity-based compliance option for aerosol coatings. During development of the voluntary reactivity regulation proposal, staff and several representatives of the aerosol coating industry came to the conclusion that it was preferable to pursue replacing the VOC content limits with mandatory reactivity-based VOC limits. In reaching this conclusion, the industry indicated that reactivity-based VOC limits may provide more flexibility, yet still provide the same air quality benefit as the mass-based VOC limits. With agreement from the majority of the aerosol coating industry, staff is proposing mandatory reactivity-based VOC limits.

The aerosol coatings regulation contains limits for 35 aerosol coating categories that specify the maximum allowable amount of VOC, on a percent-by-weight basis, that can be contained in an aerosol coating product. Staff is proposing to replace the January 1, 2002, VOC limits for aerosol coatings with equivalent reactivity-based limits. The units of the limits would be in grams of ozone per gram of product.

These proposed amendments recognize that each VOC has a different potential to form ozone once emitted. This concept is known as reactivity. By understanding the differences in VOCs' abilities to form ozone, an efficient control strategy can be established that, rather than limiting the total mass of VOCs, limits the amount of ozone produced by the VOCs. As the basis for setting reactivity limits, staff is proposing to use the maximum incremental reactivity (MIR) scale. To set the reactivity limits, staff has quantified the expected ozone reductions that would have been achieved from implementation of the January 1, 2002, mass-based VOC limits and calculated a reactivity limit that would ensure an equal ozone reduction benefit. The concepts of VOC photochemical reactivity are discussed in detail in the Initial Statement of Reasons (ISOR).

The proposed amendments would also eliminate use of the emissions averaging provisions contained in the Alternative Control Plan (ACP) (sections 94540-94555, title 17, CCR). This is because the ACP currently is not designed to allow averaging based on ozone formation.

The staff is also proposing to extend the January 1, 2002, effective date to June 1, 2002, for the six general coating product categories, and to January 1, 2003, for the 29 specialty coating categories to provide sufficient time for manufacturers to comply with the proposed amendments.

2. Adopt a number of amendments to implement the proposed reactivity-based limits.

- ARB staff is proposing to change the title of the regulation to the "Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions." This title change would reflect the change to a reactivity-based control strategy.
- A number of additional definitions are proposed in section 94521(a). These definitions are necessary to describe various reactivity-related terms used in the regulation.
- Staff is proposing a provision in section 94522(c) to restrict potential increased use of methylene chloride after the effective date of the proposed reactivity limits. Methylene chloride has been identified as a toxic air contaminant. Because it is also a negligibly reactive compound, its use could increase after the reactivity limits become effective. To restrict its use staff is proposing that products containing methylene chloride could continue to use it to meet the reactivity limits, as long as the amount of methylene chloride does not increase. Manufacturers currently not using methylene chloride in their products could not reformulate using methylene chloride. Staff's complete analysis and rationale for this provision is contained in the ISOR.
- Staff is proposing amendments to section 94526, Test Methods. The amendments specify that Method 310 would be used to determine aerosol coating ingredients. To aid in enforcement, the proposed amendments would require that, upon receiving written notice from the Executive Officer that products had been selected for compliance testing, the aerosol coating manufacturer would have 10 working days to supply formulation data and any other information necessary to determine compliance.

- Finally, staff is proposing various other conforming changes that are necessary to integrate the new reactivity-based limits into the existing aerosol coatings regulation.

3. Adopt New Tables of MIR Values

To implement the regulation, staff is proposing to establish a new subchapter, Subchapter 8.6, in title 17, CCR. Proposed new Subchapter 8.6, sections 94700 and 94701 would contain tables of MIR values that would be used to set reactivity-based limits and determine compliance. The MIR scale was developed by Dr. William Carter at the University of California, Riverside. This scale is used to compare the reactivities of VOCs' abilities to form ozone. The higher the MIR value, in grams ozone per gram of VOC, the more ozone a VOC has the potential to form in the atmosphere. More information on the use of the MIR scale is included in the ISOR.

4. Modify ARB Method 310

Staff is also proposing amendments to ARB Method 310 so that it can be used for determining compliance with the proposed reactivity limits. These amendments would allow Method 310 to be used with manufacturers' formulation data to determine the amount and type of each ROC ingredient in an aerosol coating product. At present, Method 310 is used to determine the total VOC content in consumer products and aerosol coating products, and is incorporated by reference in sections 94506, 94515, and 94526, title 17, CCR.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations that establish VOC or reactivity-based limits for aerosol coatings.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The ARB staff has prepared a Staff Report: 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 (June 22, 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 contact persons 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 persons 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/aerocoat/aerocoat.htm>

Further inquiries regarding the proposed amendments to the Aerosol Coatings Regulation, and the proposed new Subchapter 8.6, should be directed to the agency contact person for this rulemaking, Ms. Carla Takemoto, Manager, Technical Evaluation Section, Stationary Source Division at (916) 322-8283. Inquiries regarding the proposed amendments to Method 310 should be directed to agency contact person Mr. Michael Spears, Manager, Evaluation Section, Monitoring and Laboratory Division at (916) 322-8959.

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 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 those costs are reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary 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 beneficial 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 January 1, 2002, VOC limits.

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 business 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.

As explained in the ISOR, it is possible that some individual businesses may be adversely affected by the proposed regulatory action even though the overall economic impact of this regulatory action should be positive. Therefore, the Executive Officer finds that the adoption of the regulatory action may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

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 Pacific Time June 21, 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 aerocoat@listserv.arb.ca.gov and received at the ARB no later than 12:00 noon Pacific Time, June 21, 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 proposed 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 non-substantial 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: April 25, 2000