

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A HAIRSPRAY CREDIT PROGRAM

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adoption of a regulation establishing a Hairspray Credit Program. Related amendments will also be considered to the California Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Antiperspirants and Deodorants, the Regulation for Reducing VOC Emissions from Consumer Products, the Regulation for Reducing VOC Emissions from Aerosol Coating Products, and the Alternative Control Plan Regulation.

DATE: November 13, 1997

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., November 13, 1997, and may continue at 8:30 a.m., November 14, 1997. Please consult the agenda for the meeting, which will be available at least 10 days before November 13, 1997, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new sections 94560-94574, Title 17, California Code of Regulations (CCR); proposed amendments to sections 94502, 94509, 94522, and 94548, Title 17, 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 compounds (VOCs) emitted by consumer products. As part of the regulatory process, the ARB must determine that adequate data exists 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.

To date, four regulations (and subsequent amendments) have been adopted by the ARB pursuant to Health and Safety Code section 41712. These regulations are: (1) the Regulation

for Reducing VOC Emissions from Antiperspirants and Deodorants (sections 94500-94506.5, Title 17, CCR); (2) the Regulation for Reducing VOC Emissions from Consumer Products (sections 94507-94517, Title 17, CCR); (3) the Regulation for Reducing VOC Emissions from Aerosol Coating Products (Title 17, CCR sections 94520-94528; and (4) the Alternative Control Plan Regulation for Consumer Products and Aerosol Coating Products (Title 17, CCR, sections 94540-94555). Collectively, these four regulations are referred to as the “California Consumer Products Regulations.”

A two-tiered standard for hairspray is included in the Regulation for Reducing VOC Emissions from Consumer Products. The first-tier standard of 80 percent VOC became effective on January 1, 1993. In March 1997, the second-tier standard of 55 percent VOC was postponed by the Board from January 1, 1998, to June 1, 1999. At the time the standard was postponed, the Board directed staff to work with interested parties to develop a hairspray credit program designed to provide an incentive for manufacturers to come into early compliance with the 55 percent VOC standard, and to reward those manufacturers that put forth the effort to develop products with lower VOC levels than required.

Description of the Proposed Regulatory Action

The proposed regulatory action will add a new regulation creating the Hairspray Credit Program. Under this proposed voluntary program, manufacturers who comply with the second-tier hairspray standard of 55 percent VOC before the June 1, 1999, effective date can be awarded credits until the standard takes effect. Also, manufacturers who make hairsprays with lower levels of VOC than required by the 55 percent VOC standard can be awarded credits for products manufactured up to January 1, 2005. Credits will expire five years after issuance or January 1, 2005, whichever is later. The proposed program establishes procedural safeguards to ensure that any credits awarded are real, permanent, quantifiable, enforceable, and surplus.

The proposed program will allow only certain specific uses of credits under the California Consumer Products Regulations. Credits may be used to obtain additional time to comply (i.e., a delayed compliance period) with the upcoming VOC standards for a wide variety of consumer products, with compliance dates ranging from January 1, 1999, to January 1, 2005. It is expected that this will be the primary way that credits are used. Credits may also be used to mitigate excess emissions that result from the granting of a variance from the hairspray standard after June 1, 1999, to provide an environmental benefit by retiring credits, or to reconcile any shortfalls occurring in a compliance period under the Alternative Control Plan Regulation. Credits may be used until January 1, 2010, but may not be used after that date. To allow hairspray credits to be used in these ways, amendments are also being proposed in this regulatory action to several sections of the California Consumer Products Regulations.

Comparable Federal Regulations

The United States Environmental Protection Agency (U.S. EPA) has published a proposed rule, *National Volatile Organic Compound Emission Standards for Consumer Products*, which appeared in the April 2, 1996, Federal Register (Vol. 61, No. 64, pages 14531-14543). The proposed rule specifies VOC standards for hairsprays and other consumer products, and is similar overall to the ARB's consumer products regulation. Regarding hairsprays, ARB's second-tier, 55 percent VOC standard for hairsprays is more stringent than the 80 percent VOC limit specified in the proposed U.S. EPA rule. Various other differences also exist between the ARB's regulation and the U.S. EPA's proposed rule.

There are no federal regulations which establish a credit program for hairsprays or for any other category of consumer product. However, in April 1994, the U.S. EPA published a rule governing state and local economic incentive programs (EIPs). The EIP rule outlines general criteria for designing EIPs. Under the rule, state EIPs should contain design features that will ensure that the EIPs are consistent with other requirements of the federal Clean Air Act and that emissions reductions credited to the EIPs are quantifiable, surplus, enforceable, and permanent over the duration of the programs. The rule outlines a number of program elements which would generally need to be included in a state EIP. The U.S. EPA specifies that the EIP rule may be used as guidance for developing discretionary state programs. Because the proposed Hairspray Credit Program is a discretionary economic incentive program, ARB staff drew upon the U.S. EPA's EIP rule as guidance. Consistent with using the EIP rule as guidance, the proposed Hairspray Credit Program generally incorporates the program elements outlined in the federal EIP rule.

AVAILABILITY OF DOCUMENTS AND 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 (September 29, 1997) prior to the scheduled hearing. The ISOR contains the full text of the proposed action. 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 immediately 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.

Further inquiries regarding this matter should be directed to Ms. Beverly Werner, Manager, Regulatory Assistance Section, Stationary Source Division, at (916) 322-3984.

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 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 will have an overall beneficial economic impact. Since participating in the proposed program would be completely voluntary, individual businesses would decide to participate based on expectations of favorable economic impacts. 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. 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.

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 the proposed amendments will be positive. Therefore, the Executive Officer finds that the adoption of the proposed amendments 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.

The Board's Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the regulation may 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. 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, 5th Floor, Sacramento, CA 95814, no later than 12:00 noon November 12, 1997, or received by the Clerk of the Board at the hearing.

The ARB requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing. 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 HEARING PROCEDURES

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, 41712, 42400-42403, and 42404.5 of the Health and Safety Code; and section 338(k) of the Code of Civil Procedure.

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: