

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED
AMENDMENTS PERTAINING TO HAIRSPRAY IN THE CALIFORNIA
CONSUMER PRODUCTS REGULATION

The Air Resources Board (ARB/Board) will conduct a public hearing at the time and place noted below to consider adoption of amendments relating to hairsprays in the Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Consumer Products (The California Consumer Products Regulation).

DATE: March 27, 1997
TIME: 9:00 a.m.
PLACE: Air Resources Board
Board Hearing Room, Lower Level
2020 L Street
Sacramento, California

This item will be considered at a one-day meeting of the ARB, which will commence at 9:00 a.m., March 27, 1997. Please consult the agenda for the meeting, which will be available at least 10 days before March 27, 1997, to determine the time when this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY
STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94509, 94513, and 94514, 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 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.

Pursuant to Health and Safety Code section 41712, the Board has approved the California Consumer Products Regulation; sections 94507-94517, Title 17, CCR, which was adopted by the Board in two phases. Phase I was approved on October 11, 1990, and Phase II was approved on January 9, 1992.

A two-tiered standard for hairspray was included as part of the Phase I Board action. The first-tier standard of 80 percent VOC became effective on January 1, 1993. The second-tier standard of 55 percent VOC will become effective on January 1, 1998. When the second-tier standard for hairspray was adopted, the Board recognized that the standard would present formulation challenges to manufacturers. Therefore, the Board directed the staff to report on industry's progress in meeting the standard prior to

1998.

The hairspray category represents the largest and single most significant source of consumer product VOC emissions in California with an estimated 46 tons per day of VOC emissions in 1990. The 80 percent VOC limit reduced these VOC emissions by approximately 7 tons per day statewide. The 55 percent VOC limit will reduce VOC emissions by an additional 14 tons per day. Both of these limits became federally enforceable as part of the approved State Implementation Plan (SIP) when the consumer products regulation was approved by the United States Environmental Protection Agency (U.S. EPA) as a SIP revision on February 14, 1995.

Description of the Proposed Regulatory Action

ARB staff is proposing the following amendments for Board approval:

1. Postpone the 55 percent VOC standard from January 1, 1998 to June 1, 1999.

The consumer products regulation currently specifies a 55 percent VOC standard for hairsprays, effective January 1, 1998. Staff is proposing to postpone the effective date of the 55 percent standard until June 1, 1999. After extensive consultation with industry representatives and upon completion of our own analysis, staff concluded that the additional time proposed is needed for hairspray manufacturers to complete reformulation research, consumer testing, and final product development. Fortunately, the emission reductions committed to in the SIP will not be compromised because the air pollution control districts have not claimed these reductions until the beginning of the 1999 summer ozone season.

2. Require plans demonstrating progress toward compliance (with periodic updates) from manufacturers selling hairsprays not meeting the 55 percent VOC standard during the period from January 1, 1998 to June 1, 1999.

We are proposing that hairspray manufacturers be required to submit plans demonstrating progress toward compliance to the Executive Officer. The plans would outline the specific steps they will take in developing complying products. These plans would be due on or before January 1, 1998, and would be submitted by those manufacturers selling hairspray formulas with a VOC content greater than 55 percent during the period from January 1, 1998 to June 1, 1999. In addition to the initial plan, the manufacturers would also be required to submit periodic progress updates to their plans as the June 1, 1999, date approaches.

3. Modify the variance provision to include a requirement for VOC emissions mitigation when granting a variance request for hairsprays from the June 1, 1999, standard.

The California Consumer Products Regulation currently allows manufacturers to apply for variances if certain criteria are met.

The proposed amendment would modify the variance provision to allow the Executive Officer to require mitigation of excess VOC emissions for manufacturers seeking variances for hairsprays after June 1, 1999. This amendment would also allow the Executive Officer to waive all or part of this requirement in certain circumstances.

In addition to these proposed regulatory amendments, staff is proposing to work during the upcoming year with industry representatives to develop an early reduction credit program. Our goal with this program is to provide an incentive for manufacturers to come into compliance early and to reward those manufacturers that do develop 55 percent VOC hairspray products by January 1, 1998. We envision that credits generated by a manufacturer could be used in a variety of ways, such as using credits to obtain additional time to comply with another product standard, selling to other companies needing to mitigate emissions under a variance, or selling in the open market (to non-consumer product sources). Specific regulatory language for the early reduction credit program will be proposed in a future regulatory action.

Comparable Federal Regulations

The 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 to the ARB's consumer products regulation. However, differences exist between the ARB's regulation and the U.S. EPA's proposed rule; following is a brief description of the more significant of these differences. The U.S. EPA's proposed 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 several product categories which are regulated under the ARB regulation. All of the VOC standards in the U.S. EPA's proposed rule have a standard effective date of September 1, 1996, whereas the VOC standards in the ARB regulation are phased in on various dates from 1993 to 1999. There are no comparable U.S. EPA standards for products in the ARB rule that have effective dates beyond September 1, 1996. The U.S. EPA's proposed rule thus does not have a second tier of "future effective" VOC standards for any product category including hairsprays. Finally, the U.S. EPA's proposed rule has an unlimited "sell-through" period for non-complying products manufactured before the effective date of the standards, whereas California law allows a three year sell-through period.

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 prior to the scheduled hearing (February 7, 1997). 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. Peggy Taricco, Manager, Technical Evaluation Section, Stationary Source Division, at (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 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 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 likely 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. Specifically, the postponement of the standard may result in a few manufacturers or suppliers not realizing the return on their investment that they had planned.

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 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. 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 March 26, 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, 39607, 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.

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: January 28, 1997