

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF THE ALTERNATIVE CONTROL PLAN (ACP) FOR CONSUMER PRODUCTS

The Air Resources Board ("ARB") will conduct a public hearing at the time and place noted below to consider adoption of the Alternative Control Plan for consumer products.

DATE: September 22, 1994
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., September 22, 1994 and will continue at 8:30 a.m., September 23, 1994. This item may not be considered until September 23, 1994. Please consult the agenda for the meeting, which will be available at least 10 days before September 22, 1994 to determine the time when this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new Article 4, sections 94540 to 94555, Title 17, California Code of Regulations (CCR).

Background

In 1988, the Legislature enacted the California Clean Air Act ("the Act"), which declared that attainment of the California state ambient air quality standards is necessary to promote and protect public health, particularly of children, older people, and those with respiratory diseases. The Legislature also directed that these standards be attained by the earliest practicable date.

The Act added section 41712 to the California Health and Safety Code, which requires the ARB to adopt regulations to achieve the maximum feasible reduction in reactive organic compounds (ROCs) emitted by consumer products ("ROC" is equivalent to "VOC"). As part of the regulatory adoption 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.

Two regulations have been adopted by the ARB to fulfill the requirements of Health and Safety section 41712. The ARB approved a regulation for reducing VOC emissions from antiperspirants and deodorants (the "antiperspirant and deodorant regulation"; sections 94500--94506.5, Title 17, CCR) on November 8, 1989. The ARB also approved a more comprehensive regulation for reducing VOC emissions from 26 other categories of consumer products (the "consumer products regulation"; sections 94507--94517, Title 17, CCR), which was approved by the Board in two phases. Phase I was approved on October 11, 1990 and Phase II was approved on January 9, 1992.

The consumer products regulations reduce VOC emissions primarily through a "command-and-control" approach. Under this approach, the regulations specify maximum allowable VOC content limits (by weight percent) for individual product categories. Although the regulations provide flexibility in a number of ways, there is room for providing additional flexibility in order to improve the efficiency the ARB consumer products program. The purpose of the proposed ACP regulation is to provide additional flexibility and achieve this higher level of efficiency. The ACP regulation is designed to lower manufacturers' overall cost of reducing VOC emissions from consumer products, thereby reducing overall societal cost impacts to consumers, while at the same time achieving emission reductions that are equivalent to the emission reductions achieved by the existing consumer products regulations.

Description of the Proposed Alternative Control Plan

The proposed ACP is a voluntary, market-based regulation which employs the well-established concept of an aggregate emissions cap or "bubble." An emissions bubble places an overall limit on the aggregate emissions from a group of products, rather than placing a limit on the VOC content or emissions from each individual product. Upon implementation of the proposed ACP regulation, consumer product manufacturers will have the flexibility to choose, from the menu of available options, the appropriate combination of available emission reduction programs for its products that will minimize its overall compliance costs.

Manufacturers who voluntarily choose to enter the ACP program would select the products and formulate a detailed ACP bubble program ("ACP plan") for those products. Approval of an ACP plan would be contingent on whether it satisfactorily meets the proposed approval process requirements. An approved ACP plan must demonstrate that the total VOC emissions under the bubble would not exceed the emissions that would have resulted had the products been formulated to meet the VOC standards. In addition, the ACP plan must be based on accurate and enforceable records of ACP product sales in California to ensure that all emission reductions will be real and quantifiable.

Once approved, the manufacturer must sell its products in accordance with the conditions contained within the ACP plan. Under an approved ACP plan, the manufacturer could sell products that exceed the VOC standards specified in the existing regulations, provided that the emissions from these high-VOC products will be sufficiently offset by the emissions from products reformulated to "overcomply" with the VOC standards. Overall, compliance with

approved ACP plans will ensure that the total VOC emissions from the selected products will be no greater than the aggregate emissions that would have occurred from those same products, if they had been reformulated to meet the existing VOC standards.

Finally, it should be noted that the proposed ACP regulation would allow ACPs to include only those products for which VOC standards are specified in the ARB consumer products regulations (section 94509, Title 17, CCR). Antiperspirant and deodorant products would not be allowed to be part of an ACP, because such inclusion is impractical due to the different regulatory structures of the consumer products and antiperspirant and deodorant regulations.

Comparable Federal Regulations

There are no existing comparable federal regulations or statutes that regulate VOC emissions from consumer products. However, the United States Environmental Protection Agency (U.S. EPA) may promulgate consumer products regulations in the future pursuant to: (1) section 183(e)(3) of the federal Clean Air Act Amendments of 1990 [CAAA; 42 U.S.C. 7511b(e)(3)], and (2) the proposed Federal Implementation Plan (FIP) for the Sacramento, Ventura, and South Coast nonattainment areas (59 FR 23264, 23318; May 5, 1994).

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff has prepared a Staff Report which includes the initial statement of reasons for the proposed action and a summary of the environmental and economic impacts of the proposal. Copies of the Staff Report 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. The Staff Report contains the full text of the proposed adoption. The staff has 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.

Further inquiries regarding this matter should be directed to Mr. Floyd Vergara, Air Resources Engineering Associate, Solvents Control Section, Stationary Source Division, at (916) 327-1503.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the ARB's Executive Officer concerning the costs or saving necessarily incurred in reasonable compliance with the proposed regulations 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 11345.5(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 preparing the regulatory proposal, the staff has considered the potential economic impacts on California business enterprises and individuals. Overall, staff expects the ACP to have beneficial economic impacts as compared to the existing consumer products regulations. Since entry into the ACP program is completely voluntary, the advantages of entering the program will be determined on a case-by-case basis by each manufacturer who wishes to participate. It is therefore reasonable to conclude that individual manufacturers will not enter the ACP program unless they believe their compliance overall costs will be less than or, at most, equal to the costs to comply with the existing regulations.

We therefore anticipate that the overall cost-effectiveness for participating ACP manufacturers should be lower than the \$0.01 to \$1.04 per pound of VOC reduced estimated by staff for manufacturers to comply directly with each of the VOC standards in the consumer products regulations. Similarly, we expect that the total annual cost to the entire consumer product industry, assuming that some manufacturers choose to operate under an ACP, will be lower than the approximate 13 million to 205 million dollars estimated for compliance with the consumer products regulations. This range reflects the wide range of products and reformulation options available to manufacturers.

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 11346.54, the Executive Officer has determined that the proposed ACP 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 ACP can be found in the Staff Report.

As explained in the Staff Report, it is possible that some individual businesses (i.e., the competitors of participating ACP businesses) may be adversely affected by the proposed regulatory action, even though the overall economic impact of the ACP will be positive. Therefore the Executive Officer finds that the adoption of the ACP regulation may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on businesses 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 11343.2, 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 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 Board Secretary, 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, September 21, 1994, or received by the Board Secretary at the hearing.

The ARB requests but does not require, that 20 copies of any written statement be submitted and that all written statements to 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 the staff in advance of the hearing.

STATUTORY AUTHORITY AND HEARING PROCEDURES

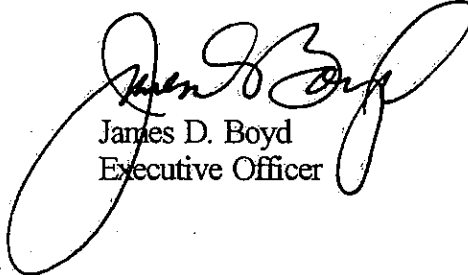
The adoption of the ACP regulation is proposed under the authority granted to the ARB in sections 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39600, 40000, 41511, 41712, 42400-42403, and 42404.5 of the 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. In this rulemaking, the ARB will not consider revisions to Title 17, California Code of Regulations, sections 94500--94517 (the ARB antiperspirant and deodorant regulation and consumer products regulation).

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 place 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

A large, stylized handwritten signature in black ink, appearing to read 'James D. Boyd', is written over the printed name and title.

James D. Boyd
Executive Officer

Date: July 26, 1994