

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A PROPOSED AIRBORNE TOXIC CONTROL MEASURE FOR EMISSIONS OF HEXAVALENT CHROMIUM AND CADMIUM FROM MOTOR VEHICLE AND MOBILE EQUIPMENT COATINGS

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation to eliminate emissions of hexavalent chromium and cadmium from motor vehicle and mobile equipment coatings. The proposed regulation is intended to reduce emissions from coating products that are predominantly used in original equipment manufacturing (OEM) and automotive repair and refinishing coating activities. The proposed regulation would establish standards for these coatings. The proposed regulation is applicable to both OEM coatings and refinishing coatings.

DATE: September 20, 2001

TIME: 9:00 a.m.

PLACE: Air Resources Board
Cal/EPA Headquarters Building
Coastal Hearing Room, 2nd Floor
1001 "I" Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. on Thursday, September 20, 2001, and may continue at 8:30 a.m., September 21, 2001. This item may not be considered until September 21, 2001. Please consult the agenda for the meeting, which will be available at least ten days before September 20, 2001, to determine the time when 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 September 6, 2001, at (916) 322-5594, or Telecommunications Device for the Deaf (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 POLICY STATEMENT OVERVIEW

Sections Affected

Proposed adoption of section 93112, title 17, California Code of Regulations (CCR).

Background

The California Toxic Air Contaminant Identification and Control Program (Program), established under California law by Assembly Bill 1807 (chapter 1047, Statutes of 1983) and set forth in Health and Safety Code (HSC) sections 39650 - 39675, requires the ARB to identify and control air toxics in California. The Board identified hexavalent chromium and cadmium as toxic air contaminants (TACs) at its January 1986 and January 1987, Board hearings, respectively. Each TAC was identified without a Board-specified threshold exposure level.

Following the identification of a substance as a TAC, HSC section 39665 requires the ARB, with participation of the air pollution control and air quality management districts, and in consultation with affected sources and interested parties, to prepare a report on the need and appropriate degree of regulation for that substance. HSC section 39665(b) requires that this needs assessment address, among other things, the technological feasibility of proposed airborne toxic control measures (ATCMs) and the availability, suitability and relative efficacy of substitute products or processes of a less hazardous nature. A needs assessment for hexavalent chromium was conducted in 1988. The ARB staff has prepared an Initial Statement of Reasons (ISOR) for this proposed regulation that serves as the report on the need and appropriate degree of regulation for cadmium.

Once the ARB has evaluated the need and appropriate degree of regulation for a TAC, HSC section 39666 requires the ARB to adopt the ATCMs as regulations to reduce emissions of the TAC. Because hexavalent chromium and cadmium do not have Board-specified threshold exposure levels, HSC section 39666 requires that the proposed ATCM be designed to reduce emissions to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, with consideration of cost, risk, environmental impacts, and other specified factors. In developing the proposed ATCM, State law requires assessment of the appropriateness of substitute products or processes.

Description of the Proposed Regulatory Action

The proposed ATCM would eliminate emissions of hexavalent chromium and cadmium from motor vehicle and mobile equipment coating facilities (primarily auto bodyshops) by prohibiting the addition of hexavalent chromium and/or cadmium to motor vehicle and mobile equipment coatings. Specifically, the proposed ATCM prohibits the sale for use in California of any motor vehicle and/or mobile equipment coating that contains hexavalent chromium or cadmium. The ATCM also prohibits the use in California of a motor vehicle and/or mobile equipment coating that contains hexavalent chromium or cadmium.

Administrative Requirements

The proposed regulation would provide manufacturers a six-month sell-through period for the products that contain hexavalent chromium or cadmium manufactured on or before the effective date of the regulation. Manufacturers are required to date-code the products in order to qualify for the sell-through provision. In addition, the coating facility owners and operators are provided 12 months from the effective date of the regulation to use the coatings containing hexavalent chromium or cadmium.

For compliance purposes, manufacturers would be required to display a date or date-code on the product container indicating the date of manufacture and to provide the date-code key to the air pollution control and air quality management districts.

Test Methods

The proposed regulation includes test methods for determining compliance. The proposed test methods are: American Society for Testing and Materials (ASTM) Method D3335-85a (1999), Standard Test Method for Low Concentrations of Lead, Cadmium, and Cobalt in paint by Atomic Absorption Spectroscopy; United States Environmental Protection Agency Test Method 7196A, Chromium, Hexavalent (Colorimetric) and Test Method 3060A, Alkaline Digestion for Hexavalent Chromium. Alternative methods which are shown to accurately determine the concentration of hexavalent chromium or cadmium compounds in a subject coating product or its emissions may be used upon written approval of the Air Pollution Control Officer.

Comparable Federal Regulations

Staff reviewed federal regulations governing worker safety to ensure there were no conflicting provisions. There are no comparable federal regulations covering emissions of hexavalent chromium and/or cadmium from the use of motor vehicle and mobile equipment 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, which includes a summary of the potential environmental and economic impacts of the proposal, if any, and supporting technical documentation. The Staff Report is entitled *Airborne Toxic Control Measure for Emissions of Hexavalent Chromium and Cadmium from Motor Vehicle and Mobile Equipment Coatings*.

Copies of the Staff Report and the full text of the proposed regulatory language may be obtained from: Air Resources Board, Public Information Office, 1001 I Street, Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (September 20, 2001). Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the proposed administrative action or substance of the proposed regulation may be directed to the designated agency contact persons: Jose Gomez, Manager, Technical Development Section, Measures Assessment Branch, Stationary Source Division, at (916) 324-8033, or Mark Watkins, Air Pollution Specialist, Technical Development Section, Measures Assessment Branch, Stationary Source Division, at (916) 324-8161.

Further, the agency representatives and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The ARB has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or 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, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking, at <http://www.arb.ca.gov/regact/autoref/autoref.htm>.

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 Board's Executive Officer has determined that the proposed regulatory action will create costs, as defined in Government Code section 11346.5(a)(6), to State agencies. Any such costs should be minimal, and affected State agencies should be able to

absorb these costs within existing budgets and resources. The Executive Officer has also determined that the proposed regulatory action will not create costs or savings in federal funding to the State, costs or mandate to any 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 non-discretionary savings to State or local agencies.

The proposed regulatory action will also impose a mandate upon and create costs to local agencies (i.e., local air pollution control and air quality management districts; the "districts"). However, in this case, such administrative costs to the districts are recoverable by fees that are within the districts' authority to assess (see Health and Safety Code sections 42311 and 40510). Therefore, the Executive Officer has determined that the proposed regulatory action imposes no costs on local agencies that are required to be reimbursed by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, and does not impose a mandate on local agencies that is required to be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially assessed that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Other than negligible impacts, the Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed ATCM should have minimal impacts on the creation or elimination of jobs within the State of California, minimal impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minimal impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed ATCM can be found in the ISOR.

The Board's Executive Officer has also determined that the regulation will affect small business.

Before taking final action on the proposed regulatory action, the ARB must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of 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 Board, written submissions must be received **no later than 12:00 noon, September 19, 2001**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 "I" Street, 23rd Floor
Sacramento, CA 95814

Electronic mail is to be sent to: autoref@listserv.arb.ca.gov, and received at the ARB **no later than 12:00 noon, September 19, 2001**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928, and received at the ARB **no later than 12:00 noon, September 19, 2001**.

The Board 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 to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY

This regulatory action is proposed under the authority granted to the ARB in sections 39600, 39601, 39650, 39655, 39656, 39658, 39659, 39665, and 39666 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 39002, 39600, 39650, 39655, 39656, 39658, 39659, 39665, 39666, and 40000, 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, 1001 "I" Street, Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

MICHAEL P. KENNY
EXECUTIVE OFFICER

Date: July 24, 2001

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at www.arb.ca.gov.