

California Environmental Protection Agency



**Air Resources Board**

**Final Statement of Reasons for Rulemaking,  
Including Summary of Comments and Agency Responses**

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

**Scheduled for Consideration: March 27, 1997  
Agenda Item No.: 97-2-1**

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AIR RESOURCES BOARD**

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**I. INTRODUCTION**

On March 27, 1997, the Air Resources Board (the “Board” or “ARB”) conducted a public hearing to consider the adoption of amendments pertaining to hairspray in the Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Consumer Products (the “consumer products regulation”; Title 17, California Code of Regulations (CCR), sections 94507-94517). An Initial Statement of Reasons for Proposed Rulemaking (ISOR) was prepared and made available to the public on February 7, 1997. The ISOR is incorporated herein by reference. This Final Statement of Reasons (FSOR) summarizes the written and oral comments received during the rulemaking process, and contains the ARB’s responses to these comments.

At the hearing the Board approved Resolution 97-14, in which the Board adopted the amendments as originally proposed, with no modifications. The amendments adopted by the Board will be contained in Title 17, CCR, sections 94509, 94513 and 94514. The amendments postpone the 55 percent VOC standard for hairsprays from January 1, 1998 to June 1, 1999. The amendments also require the submission of plans demonstrating progress towards compliance (with periodic updates) from manufacturers selling hairsprays that do not meet the 55 percent VOC standard during the period from January 1, 1998 to June 1, 1999. Finally, the amendments modify the variance provision to include a requirement for VOC emissions mitigation, when a variance request is granted from the June 1, 1999 standard for hairsprays.

The Board has determined that the proposed amendments 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 the proposal, the staff considered the potential cost impact of the proposed amendments on California business enterprises and individuals. A detailed discussion of these impacts is included in the ISOR.

The Board has further determined that no alternative was presented or considered which would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected persons, than the action taken by the Board.

Finally, it should be noted that one nonsubstantial change was made to the proposed new subsection 94513(e) (*Special Reporting Requirements for Hairsprays*). In the Final Regulation Order, this new subsection was designated as subsection (f) instead of subsection (e). This nonsubstantial change was necessary in order to accommodate the modifications to section 94513 that were made in a separate rulemaking action, which was submitted to the Office of Administrative Law on October 3, 1997.

## **II. SUMMARY OF COMMENTS AND AGENCY RESPONSES**

The Board received both written and oral comments in connection with the March 27, 1997 hearing. Most commenters supported the proposed amendments. While comments supporting the amendments were considered by the Board, they are not specifically responded to in this FSOR because these comments were not objections or recommendations specifically directed at the proposed action on the procedures followed by the Board in proposing or adopting the proposed action.

The Cosmetic, Toiletry, and Fragrance Association (CTFA) submitted two comment letters (dated March 18, 1997 and March 26, 1997) which support the proposed amendments. Appended to the March 26 comment letter are a number of attachments (Exhibits A-D) containing background technical information on the feasibility and timing of producing 55 percent VOC hairsprays, and data on hairspray sales trends in California. Many of these attachments are letters and documents that the CTFA previously provided the ARB during the extended informal workshop process before the start of the formal 45-day comment period. These letters and documents basically describe the technical problems with achieving the 55 percent standard, and take the position that the 55 percent standard should be postponed until January 1, 2002, instead of the June 1, 1999 date proposed by ARB staff. This FSOR does not specifically respond to the documents appended as Exhibits A-D, since in its March 26, 1997 cover letter the CTFA indicates that the organization had changed its earlier position and now supported all of the ARB staff's proposed amendments. However, the technical issues raised in Exhibits A-D are discussed in the

ISOR, which addresses in detail the feasibility, timing, and technical issues related to the 55 percent VOC standard.

Although the CTFA testified in support of the amendments, this FSOR does address one issue raised on page 2 of CTFA's March 26, 1997 comment letter (see the response to Comment No. 8 below). The issue is whether the recent decline in California hairspray sales shows that the 55 percent hairspray standard is no longer "necessary" within the meaning of Health and Safety Code section 41712. Some of the Exhibits appended to the CTFA's March 26 letter consist of arguments and data supporting the CTFA's contention that hairspray sales have declined significantly in California. This issue is addressed below because it is a separate comment which the CTFA raised in the main body of its March 26 comment letter.

A list of commenters is set forth below, identifying the date and form of all comments that were timely filed. Following the list is a summary of each objection or recommendation made regarding the proposal, together with an explanation of how the proposed action has been changed to accommodate the objection or recommendation, or the reasons for making no change.

CSMA           Michael Thompson  
                  Chemical Specialties Manufacturers Association, Inc.  
                  Oral Testimony: March 27, 1997

CTFA           Thomas J. Donegan, Jr.  
                  The Cosmetic, Toiletry, and Fragrance Association  
                  Oral Testimony: March 27, 1997  
                  Written Testimony: March 18, 1997  
  March 26, 1997

DP              Jim Bachman  
                  DuPont  
                  Oral Testimony: March 27, 1997

                  Paul N. Costello  
                  Du Pont  
                  Written Testimony: March 18, 1997

HIA            Richard Wells, Ph.D.  
                  Herbalife International of America  
                  Written Testimony: February 4, 1997

NAA            George W. Brown  
                  National Aerosol Association  
                  Oral Testimony: March 27, 1997  
                  Written Testimony: March 25, 1997

PG Robert N. Sturm  
Procter and Gamble Company  
Written Testimony: March 19, 1997

USEPA David P. Howekamp  
United States Environmental Protection Agency  
Written Testimony: March 26, 1997

**1. Comment:** Using current technology, a 55 percent VOC hairspray can be produced, but it is unacceptable from an aesthetic point of view. While it is theoretically possible to market an unsatisfactory 55 percent product in California and an 80 percent product outside of California, the comments from the field force would be extremely negative. The ARB is urged to delay the 55 percent VOC standard until January 1, 2002, as has been recommended by the CTFA. (HIA)

**Agency Response:** We agree that the 55 percent standard is not commercially feasible for most manufacturers by January 1, 1998. This is why the ARB staff proposed to postpone the standard until June 1, 1999. The staff believes that a June 1, 1999 date for the standard is both technologically and commercially feasible, and does not agree that it appropriate to postpone the standard until January 1, 2002. The ISOR explains in detail the rationale for this determination. It should also be noted that after Herbalife's letter was submitted to the ARB, the CTFA changed its earlier recommendation of the January 1, 2002 effective date, and decided to support the ARB staff's proposal. CTFA representatives stated that they have no reason to believe that Herbalife would disagree with their new position supporting the June 1, 1999 effective date (see page 48 of the hearing transcript). Comments supporting postponement of the 55 percent standard to June 1, 1999, including comments from the CTFA, are briefly summarized below.

**2. Comment:** The industry supports ARB staff's recommendation to postpone the effective date of the hairspray standard from January 1, 1998, to June 1, 1999, and is committed to a good-faith effort to achieve this goal. (CTFA, PG, CSMA, NAA)

**3. Comment:** In light of (1) the presence of rigorous reporting and mitigation if variances are sought and (2) assurances that market-based incentives for "early conversion" will be fully developed by staff and in place by January 1, 1998, DuPont supports the staff proposal to delay implementation of the 55 percent VOC standard until June 1, 1999. (DP)

**4. Comment:** USEPA concurs with ARB's desire to provide industry with greater flexibility at this time, and to ensure the regulation meets the requirements of California law. (USEPA)

**Agency Response:** We agree with Comments No. 2 through 4.

**5. Comment:** The State has concluded that postponement of the 55 percent VOC standard until June 1, 1999 will not cause an emission reduction shortfall. We do not disagree with this determination, but we encourage the ARB to monitor closely the industry's compliance records to ensure that emissions reductions occur on schedule and to ensure industry's prompt compliance with the 55 percent VOC standard. We also urge you to encourage industry to make a strong effort to put reformulated products on store shelves before the start of the 1999 smog season, in order to make sure that the San Joaquin Valley and San Diego are able to meet their federal ozone attainment deadline in 1999. (USEPA)

**Agency Response:** The amendments adopted by the Board require hairspray manufacturers to submit plans and periodic updates demonstrating progress toward compliance with the 55 percent VOC standard. This information will allow ARB staff to closely track the progress of individual companies toward compliance. ARB staff will also be developing a hairspray credit program which will provide an incentive for companies to comply early with the 55 percent standard, in order to obtain credits. In addition, modifications were made to the consumer products variance provision that should encourage companies to comply in a timely manner, and should help to mitigate excess emissions for any variances that are granted. All of these provisions are explained in greater detail in the Initial Statement of Reasons (Vol. I, pages 3-14; Vol. II, pages 6-11).

**6. Comment:** We support the revised California compliance date, and encourage the ARB to continue to closely monitor the impact of this technology-forcing standard. (CSMA)

**Agency Response:** As discussed more fully in the response to the previous comment, the ARB staff will be very closely monitoring the impact of the 55 percent VOC standard. Information on the standard's impact will be obtained through the staff's administration of the compliance plan reporting requirements, the hairspray credit program, and the variance process.

**7. Comment:** We are concerned about lack of details for plans requiring VOC mitigation for companies requesting a variance after June 1, 1999. The same concerns holds true for the concept of emission credits for early compliance. Until we hear more details about both plans, we feel that we do not presently have sufficient information on these two subjects to comment. (NAA)

**Agency Response:** Regarding the hairspray credit program, ARB staff has worked closely with industry to develop detailed regulatory language. A proposed hairspray credit regulation has been made available for a 45-day public comment period, which began on September 26, 1997. Regarding the variance mitigation requirements, the amendments do not provide a high level of detail in order to allow both the variance applicant and the ARB Executive Officer the flexibility to make case-by-case evaluations of the appropriate type of emissions mitigation. The amendments specify that the applicant must propose a plan for mitigating excess VOC emissions. Such plans may vary widely, depending on the applicant's individual circumstances and the available opportunities for emissions mitigation. To assist applicants, ARB

staff will be developing nonbinding guidelines that will offer suggestions on various options that are available for emissions mitigation.

**8. Comment:** Data supplied by industry shows that there has been a significant decline in hairspray sales since 1990. Because of the reduced sales of hairspray products in California, hairspray emissions are substantially below the emissions projected by the ARB staff for this product category in the California State Implementation Plan (SIP). Further reformulation of hairspray products is thus not necessary to meet the ARB's target for hairspray emission reductions in the SIP. Therefore, further hairspray reformulation is no longer "necessary", as required by the California Clean Air Act (i.e., Health and Safety Code section 41712). (CTFA)

**Agency Response:** As explained in the Initial Statement of Reasons (Volume II, page 60), there has probably been some decline in hairspray sales in recent years. But it is not possible to verify whether the decline in hairspray sales is as large as suggested by the commenter because the sales data do not include data for salons, beauty supply stores, warehouse clubs, and other outlets. However, even if one assumes that hairspray emissions have declined substantially and are currently less than estimated in the SIP for the hairspray category, the proposed amendments are still "necessary" within the meaning of Health and Safety Code section 41712.

Section 41712(b) requires the ARB to adopt regulations to achieve the maximum feasible reduction in VOCs emitted by consumer products, if the ARB determines that the regulations are "...necessary to attain state and federal ambient air quality standards...". The SIP projects that an 85 percent reduction in consumer products emissions (from the 1990 baseline year) is necessary to attain the federal ozone standard in the South Coast Air Basin. The consumer products regulations as a whole have not achieved emission reductions even remotely close to this 85 percent goal. The current regulations will only achieve a reduction of approximately 30 percent, depending on whether or not the commenter's hairspray sales data is correct. Since much greater additional reductions are necessary to attain the federal ozone standard, the reductions from the 55 percent hairspray standard are therefore "necessary" within the meaning of section 41712. In addition, section 41712(b)(1) provides that a regulation's "necessity" is to be evaluated in terms of both the state and federal standards. The SIP only addresses the ARB's commitments to achieve the federal air quality standard for ozone. The state air quality standard for ozone is more stringent than the federal standard, and will require even greater emission reductions to achieve.

Finally, it is worth examining in more detail the basis of the commenter's argument. If the commenter is correct that hairsprays sales have declined since 1990, then this simply means that the 55 percent standard, in combination with the sales decline, will result in greater emission reductions from hairsprays than the ARB originally estimated. The commenter seems to be making the argument that when the SIP includes an estimate of the emissions reductions projected from one particular product category, then somehow this estimate legally prohibits the ARB from achieving greater emission reductions from that particular category, even if it is feasible to do so. Another way of characterizing the commenter's argument is that the SIP legally prohibits the



ARB from making faster progress toward achieving the mandated 85 percent reduction than ARB staff originally thought was possible.

There is simply no legal support for these arguments. In fact, applicable state and federal law show that both the U.S. Congress and the California Legislature intended progress toward clean air to be made as quickly as possible. The California Clean Air Act specifically declares that it is the intent of the Legislature that the state air quality standards be achieved "...by the earliest practicable date..." (see Health and Safety Code sections 40910 and 40913(a); see also the unmodified section 1(b)(2) of the California Clean Air (Stats. 1988, Chapter 1568)). Similar intent is expressed in the federal Clean Air Act, which declares that the federal air quality standards are to be achieved "...as expeditiously as practicable..." (see sections 172(a)(2), 181(a), and 188(c) of the federal Clean Air Act). For all of the reasons described above, the proposed amendments are "necessary" within the meaning of Health and Safety Code section 41712.