

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATIONS

The Air Resources Board (Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to: (1) the Regulation for Reducing Volatile Organic Compound (VOC) Emissions from Consumer Products; and (2) the Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions.

DATE: November 16, 2006

TIME: 9:00 a.m.

PLACE: Public Utilities Commission  
Auditorium  
505 Van Ness Avenue  
San Francisco, California 94102

This item will be considered at a two day meeting of the Board, which will commence at 9:00 a.m., November 16, 2006, and may continue at 8:30 a.m., November 17, 2006. This item may not be considered until November 17, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before November 16, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed amendments to sections 94508, 94509, 94510, 94513, and 94523 to title 17, California Code of Regulations (CCR). Non-substantial or solely grammatical changes are also proposed to sections 94507, 94511, 94512, 94514, 94515, 94516, and 94517.

### **Background**

Section 41712 of the California Health and Safety Code requires ARB to adopt regulations to achieve the maximum feasible reduction in VOC emissions from consumer products. As part of the regulatory process, ARB must determine that adequate data exist for it to adopt the regulations. 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. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be adopted which requires the elimination of a product form.

Pursuant to Health and Safety Code section 41712, ARB has adopted several regulations which are collectively referred to as the "California Consumer Products Regulations." These regulations include: (1) the Regulation for Reducing VOC Emissions from Consumer Products (the "Consumer Products Regulation;" title 17, CCR, sections 94507-94517), and (2) the Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions (the "Aerosol Coatings Regulation;" title 17, CCR, section 94520-94528).

On November 15, 1994, ARB adopted the California State Implementation Plan for Ozone (1994 SIP). The SIP serves as California's overall plan for attaining the federal ambient air quality standard for ozone. Achieving additional VOC reductions from consumer products is an important element of the SIP and is necessary to attain state and federal air quality standards.

### **Description of Proposed Regulatory Action**

The proposed regulatory action would amend the existing Consumer Products Regulation by adding and modifying product category definitions and by establishing new VOC limits for 16 product categories. For some of the categories, separate VOC limits are specified for different product forms. Most of the new or modified VOC limits would become effective on December 31, 2008. The remainder would become effective on December 31, 2010.

In addition, various other modifications and clarifications are proposed to the existing regulatory language. These include amending several definitions, amending the VOC limit of "Nail Polish Remover," and re-evaluating the VOC limit, effective date, and category definition for "Electronic Cleaner." A number of minor changes are also proposed to various regulatory provisions in order to correct errors or improve clarity. In addition, an amendment is proposed to section 94523 (Exemptions) of the Aerosol Coatings Regulation. This amendment would clarify that several product categories are exempt from regulation under the Aerosol Coatings Regulation.

The proposed regulatory action would also prohibit the use of three toxic air contaminants – methylene chloride, perchloroethylene, and trichloroethylene – in the regulations on "Bathroom and Tile Cleaner," "Construction, Panel, and Floor Covering Adhesive," "General Purpose Cleaner," and "Oven Cleaner."

In addition to the proposed actions described above, the Board may consider whether to exempt tertiary-Butyl acetate (tBac) from the definition of "Volatile Organic Compound." The Board may also consider whether an exemption for this compound should be accompanied by provisions limiting or prohibiting its use in consumer products.

## **COMPARABLE FEDERAL REGULATIONS**

The U.S. Environmental Protection Agency (U.S. EPA) has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act: *National Volatile Organic Compound Emission Standards for Consumer Products*. (40 CFR Part 59, subpart C, sections 59.201 et seq.) The rule specifies VOC limits for a number of consumer product categories, and is similar in format to ARB's consumer products regulation. However, there are significant differences between the rules. U.S. EPA's 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." U.S. EPA's rule does not regulate a number of product categories that are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of ARB's limits are more stringent than U.S. EPA's limits. All of the VOC limits in U.S. EPA's rule have an effective date of December 10, 1998, whereas the VOC limits in the ARB regulation and the proposed amendments are phased in from 1993 to 2009. Finally, U.S. EPA's rule has an unlimited "sell-through" period for noncomplying products manufactured before the effective date of the limits, whereas California law allows a three year sell-through period.

## **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes the rationale for the proposed amendments and a summary of the potential environmental and economic impacts. Copies of the ISOR and the full text of the proposed regulatory language, in strikeout/underline format to allow for comparison with the existing regulations, may be obtained from the Board's Public Information Office, Air Resources Board, 1001 I Street, Visitor and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (November 16, 2006). These documents are also available on ARB's website listed below, or by contacting the agency contact persons listed below.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on the ARB's website listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to Mr. David Mallory, Manager, Measures Development Section, Stationary Source Division, at (916) 445-8316, email [dmallory@arb.ca.gov](mailto:dmallory@arb.ca.gov), or Trish Johnson, Air Pollution Specialist, at (916) 445-3365, email [tjohnson@arb.ca.gov](mailto:tjohnson@arb.ca.gov).

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be

directed are Artavia Edwards, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-6070, or Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board staff has compiled a record for this rulemaking action, which includes all information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

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/consprod/regact/cpwg2006/cpwg2006.htm>

### **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the ARB Executive Officer concerning the cost or savings necessarily incurred by public agencies and private persons and business in reasonable compliance with the proposed regulatory action are presented below.

The ARB Executive Officer has determined that the proposed regulatory action will not create costs or savings, as defined in Government Code section 11346.5(a)(5) and 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 cost or savings to state or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially determined that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action. As explained in the ISOR, the proposed amendments may have a significant adverse impact on some individual businesses but the overall statewide impacts are not expected to be significant.

The Executive Officer has made an initial determination 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, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has initially determined that the proposed amendments 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 amendments can be found in the ISOR.

The Board's Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses.

Before taking final action on the proposed regulatory action, 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 not physically submitted at the hearing must be received no later than **12:00 noon, November 15, 2006**, and addressed to the following:

Postal mail: Clerk of the Board  
Air Resources Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

The Board requests but does not require that 30 copies of any written statement be submitted and that all written 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 Board 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 AND REFERENCES**

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, and 41712 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 Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is 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 such event 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. Modifications could include, but would not necessarily be limited to, exempting tBac from the definition of "Volatile Organic Compound," and potentially accompanying such an exemption with provisions limiting or prohibiting its use in consumer products.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon  
Executive Officer

Date: September 19, 2006