

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO IDENTIFY ENVIRONMENTAL TOBACCO SMOKE AS A TOXIC AIR CONTAMINANT

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of a regulatory amendment identifying environmental tobacco smoke (ETS) as a toxic air contaminant (TAC). In addition to identifying ETS as a TAC, the proposed regulatory amendment specifies that there is not sufficient available scientific evidence to support the designation of a threshold exposure level to ETS below which no significant adverse health effects are anticipated.

DATE: January 26, 2006

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Byron Sher Auditorium, Second Floor  
Air Resources Board  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., January 26, 2006, and may continue at 8:30 a.m., January 27, 2006. This item may not be considered until January 27, 2006. Please consult the agenda for the meeting, which will be available at least ten days before January 26, 2006, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If you have a disability-related accommodation need, please go to <http://www.arb.ca.gov/html/ada/ada.htm> for assistance or contact the ADA Coordinator at (916) 323-4916. If you are a person who needs assistance in a language other than English, please contact the Bilingual Coordinator at (916) 324-5049. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

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

**Section Affected:** Proposed amendments to title 17, California Code of Regulations (CCR) section 93000.

#### **Background:**

Assembly Bill 1807 (Stats. 1983, ch. 1047; Health and Safety Code section 39650 et seq., Food and Agriculture Code section 14021 et seq.) sets forth procedures for the identification and control of toxic air contaminants in California. In accordance with those procedures, staff is proposing that ARB amend section 93000 of title 17,

California Code of Regulations, by adding ETS to the list of toxic air contaminants with no identified threshold exposure level below which no significant adverse health effects are anticipated.

In accordance with Health and Safety Code sections 39660 and 39661, the Office of Environmental Health Hazard Assessment (OEHHA) staff has prepared an evaluation of the health effects of ETS. In addition, ARB staff has prepared a report (Report) on ETS, which includes the OEHHA health effects evaluation. OEHHA staff found that exposure to ETS is directly associated with a variety of adverse health outcomes involving developmental, respiratory, carcinogenic, and cardiovascular effects. Some of these adverse health outcomes include heart disease; lung cancer; nasal sinus cancer; and breast cancer in younger, primarily premenopausal women. ETS has also been shown conclusively to be the cause of a number of serious impacts to children's health, such as sudden infant death syndrome (SIDS); pre-term delivery; low birth weight; induction and exacerbation of asthma; chronic respiratory symptoms; and increased acute lower respiratory and middle ear infections.

OEHHA staff estimated a nonsmoker's risk associated with various health outcomes. For example, OEHHA staff estimates that approximately 1,700-5,500 deaths will occur annually in California due to heart disease in nonsmokers exposed to ETS. Likewise, OEHHA estimates that about 400 to 1,100 lung cancer deaths in California per year are ETS-related. For ETS-exposed premenopausal women, OEHHA estimates an increase of 68 to 120 percent in breast cancer cases, relative to non ETS-exposed non-smoking women. For children, OEHHA determined that each year ETS may cause low birth weight for 1,600 newborns in California and at least 31,000 children in California will experience one or more ETS-related asthma episodes (new onset or exacerbation). About 50,000 children annually are estimated to develop middle ear infections and 18,000 to 36,000 children each year may develop lower respiratory infections, due to ETS exposure. With lung cancer deaths, heart disease deaths, and cases of SIDS, one can attribute about 4,000 deaths per year in California to ETS exposure.

OEHHA staff also found that there was not sufficient scientific evidence to support the identification of an exposure level below which carcinogenic effects would not have some probability of occurring and recommended that ETS be treated as having no identified threshold.

Other agencies and scientific bodies have also published comprehensive reviews of ETS. These include the 1986 Report from the Surgeon General by the National Research Council (NRC), the 1992 U.S. Environmental Protection Agency (U.S. EPA) report, and a 1997 California Environmental Protection Agency, OEHHA review. These reports show that ETS exposure is causally associated with respiratory illnesses, lung cancer, childhood asthma, and lower respiratory tract infections. However, scientific knowledge about ETS-related effects has grown considerably since the release of these reviews.

The Scientific Review Panel (SRP), established pursuant to Health and Safety Code section 39670, has reviewed the Report, and has submitted written findings to ARB, in

accordance with Health and Safety Code section 39661. The SRP found the Report on ETS, as well as the scientific procedures, methods, data, conclusions, and assessments to be based upon sound scientific knowledge, methods, and practices, and adopted findings recommending ARB identify ETS as a TAC.

**Description of Proposed Regulatory Action:**

In accordance with Health and Safety Code section 39662, ARB staff has prepared a proposed regulation identifying ETS as a TAC with no identified threshold exposure level. No control measures for ETS are proposed for adoption at this hearing. If ETS is listed as a TAC, Health and Safety Code section 39665 provides for the development of a report on the need for, and appropriate degree of, control measures to reduce ETS emissions. The report will be developed in a full, open, public process and in accordance with Health and Safety Code sections 39665 and 39666.

**COMPARABLE FEDERAL REGULATIONS**

There are no comparable federal regulations.

**AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff, with the participation of OEHHA staff, has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action. The ISOR summarizes the basis for the proposed regulation, the environmental and economic impacts of the proposal, and the findings of the SRP. The technical support documents reviewed by the SRP are referenced in the ISOR. The technical support documents consist of the SRP-approved Executive Summary; Part A, Exposure Assessment, prepared by ARB staff; Part B, Health Assessment, prepared by OEHHA staff; and Part C, Public Comments and ARB/OEHHA Staff Responses, prepared by both ARB and OEHHA staff.

Copies of the ISOR and technical support documents, the full text of the proposed regulation, and any other information on which the proposal is based may be accessed on ARB's website listed below, or may be obtained at ARB's Public Information Office, 1001 I Street, Visitors and Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing January 26, 2006.

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

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact person, Jim Stebbins, Air Pollution Specialist, Substance Evaluation Section, Air Quality Measures Branch, Stationary Source Division, at (916) 322-2778, or to Jim Aguila, Manager, Substance Evaluation Section, Air Quality Measures Branch, Stationary Source Division, at (916) 322-8283.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's Internet site for this rulemaking at: [www.arb.ca.gov/regact/ets2006/ets2006.htm](http://www.arb.ca.gov/regact/ets2006/ets2006.htm)

### **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 is presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings 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 any other nondiscretionary cost or savings to local agencies.

The Executive Officer finds that the identification of ETS as a TAC will not require any private person or business, including any small business, to incur any cost in reasonable compliance with the proposed action. If, and when, the need and appropriate degree of control for ETS are considered by ARB during the risk management process, all costs of compliance will be described and considered.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons and businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant adverse statewide 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 determined that the proposed amendment will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing business within the State of California, and 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 Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulation will not affect small businesses because the proposed regulation will have no regulatory effect on small businesses.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board 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 at the hearing, and in writing or by email 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 January 25, 2006**, and addressed to the following:

Postal mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95814.

Electronic mail is to be sent to: [ets2006@listserv.arb.ca.gov](mailto:ets2006@listserv.arb.ca.gov), and received at ARB **no later than 12:00 noon, January 25, 2006**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at ARB **no later than 12:00 noon, January 25, 2006**.

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 ten days prior to the hearing. 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**

This regulatory amendment is proposed under the authority granted in sections 39600, 39601, and 39662 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific, sections 39650, 39660, 39661 and 39662 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 nonsubstantial 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 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 ARB's Public Information Office, 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: