TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF THE REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM AEROSOL COATING PRODUCTS, AND AMENDMENTS TO THE ALTERNATIVE CONTROL PLAN 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 Regulation for Reducing Volatile Organic Compound Emissions from Aerosol Coating Products, and amendments to the Alternative Control Plan Regulation (ACP) for Consumer Products.

DATE:	March 23, 1995
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., March 23, 1995 and will continue at 8:30 a.m., March 24, 1995. This item may not be considered until March 24, 1995. Please consult the agenda for the meeting, which will be available at least 10 days before March 23, 1995 to determine the time when this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of new Article 3, sections 94520 to 94528, Title 17, California Code of Regulations (CCR). Proposed amendments to Article 4, sections 94540 to 94543, 94547, 94550, 94551, and 94553, Title 17, CCR.

Background

In 1988, the Legislature enacted the California Clean Air Act (the Act). 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.

The Act originally excluded aerosol paints from the definition of "consumer products" to be regulated by the ARB. However, in 1992 and 1993 the Legislature amended Health and Safety Code section 41712 to include aerosol paints within the definition of consumer products, and to require that the ARB take specific actions to reduce VOC emissions from aerosol paints. Specifically, the ARB is directed to adopt regulations for aerosol paints on or before January 1, 1995. The regulations must achieve by December 31, 1999 at least a 60% reduction in VOC emissions from aerosol paints (calculated with respect to the 1989 baseline year), and must establish interim VOC limits prior to 1999. Health and Safety Code section 41712(f) further requires the ARB to conduct a public hearing on or before December 31, 1998 to determine the technological and commercial feasibility of the final VOC limits, and grant an extension not to exceed 5 years if the ARB determines that the 60% reduction is not technologically or commercially feasible by December 31, 1999. The proposed aerosol coatings regulation is designed to fulfill all of these statutory requirements.

Three regulations have previously been adopted by the ARB pursuant to Health and Safety section 41712. On November 8, 1989, 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). The ARB then 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 adopted by the Board in two phases. Phase I was approved on October 11, 1990 and Phase II was approved on January 9, 1992.

On September 22, 1994 the ARB also approved the Alternative Control Plan for Consumer Products (ACP). The ACP is a voluntary, market-based regulation which employs the concept of an aggregate emissions cap or "bubble" from a group of products. A manufacturer who voluntarily chooses to enter the ACP program must demonstrate that the total ACP emissions under the bubble will not exceed the emissions that would have resulted if the manufacturer had reformulated its products to meet the VOC standards. The ACP regulation is designed to lower manufacturers' overall cost of reducing VOC emissions from consumer products, while at the same time achieving emission reductions equivalent to the existing regulations. The ACP regulation will be submitted to the Office of Administrative Law in early 1995.

In addition, on November 15, 1994 the ARB adopted the California State Implementation Plan for Ozone (SIP). The SIP is designed to satisfy the requirements of the federal Clean Air Act for ozone nonattainment areas in California classified as serious, severe, and extreme. The Consumer Products Element of the SIP commits to achieving substantial VOC emission reductions from consumer products, including aerosol coatings. The proposed aerosol coatings regulation is intended to partially fulfill this SIP commitment, as well as the requirements of Health and Safety Code section 41712.

Description of the Proposed Regulatory Action

The proposed aerosol coatings regulation is similar in format to the ARB consumer products regulation. The proposed regulation will prohibit the sale, supply, offer for sale, commercial application, or manufacture for use in California of any aerosol coating product with a VOC content greater than the specified standards. The standards are based on the percentage of VOC by weight. The proposed regulation establishes two sets of standards limiting the VOC content of 35 different categories of aerosol paints and related products. For all categories, the effective date of the first set of standards is January 1, 1996, and the effective date of the second set of standards is December 31, 1999.

However, as mandated by Health and Safety Code section 41712, the regulation also requires the ARB to conduct a public hearing on or before December 31, 1998, on the technological and commercial feasibility of manufacturers achieving full compliance with the 1999 VOC limits. Depending on the results of this hearing the Board may grant an extension of time for up to five years for some or all coatings categories, establish new interim limits, and modify the final compliance limits as appropriate (provided that the final compliance limits achieve at least a 60 percent reduction in VOC emissions).

In addition to establishing VOC content limits, the proposed regulation contains other provisions to improve the implementation and effectiveness of the regulation. The provisions include an eighteen-month sell-through period for noncomplying products, restrictions on the use of toxic air contaminants and ozone-depleting compounds, requirements for multi-component kits, administrative requirements for labeling and reporting information, exemptions for specific products and for products that are manufactured for use outside of California, and compliance test methods. The proposed regulation also provides a variance provision under which a person who cannot comply with the requirements of the proposed regulation may apply for a variance. The provision allows the Board's Executive Officer, upon making certain findings, to issue a variance allowing the person additional time to comply with the regulation.

Finally, the ARB is proposing amendments to the Alternative Control Plan (ACP), approved by the Board on September 22, 1994, to allow aerosol coating products to be included in an ACP. It should be noted, however, that the proposed amendments would allow an ACP to include either consumer products, or aerosol coatings products, but not both.

Comparable Federal Regulations

There are no existing comparable federal regulations or statutes that regulate VOC emissions from aerosol paints. However, the United States Environmental Protection Agency may promulgate aerosol paint regulations sometime in the future pursuant to (1) section 183(e)(3) of the federal Clean Air Act Amendments of 1990 [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; May 5, 1994).

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The ARB staff has prepared an Initial Statement Of Reasons (ISOR) for the proposed regulatory action which includes a summary of the environmental and economic impacts of the proposal and technical support documentation. Copies of the ISOR 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 ISOR contains the full text of the proposed action. 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, and is also contained in the ISOR for this regulatory action.

Further inquiries regarding this matter should be directed to Mr. Paul Milkey, Air Resources Engineering Associate, Solvents Control Section, Stationary Source Division, at (916) 327-1517.

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 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 developing the regulatory proposal, the staff evaluated the potential cost impact on private persons or businesses directly affected. The staff estimates that the average annual cost for a typical company to comply with the proposed regulatory action ranges from approximately zero to 3.6 million dollars (10 year amortization). The staff estimates that the total annual cost to the consumer products industry would range from twelve million to thirteen million dollars and the cost-effectiveness of the proposed regulatory action would range from 5,700 to 6,400 dollars per ton of VOCs reduced. This cost-effectiveness range is within the range incurred for other VOC regulations adopted by the air pollution control districts and the ARB.

In preparing the regulatory proposal, the staff has considered the potential economic impacts on California business enterprises and individuals. Overall, the staff expects that there will be no noticeable impact on the profitability of California businesses. Most businesses will be able to absorb the costs of the proposed regulation without significant adverse impacts on

their profitability. The Executive Officer has also determined that adoption of 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 11346.3, the Executive Officer has determined that this regulatory action will not affect the creation or elimination of jobs within California, the creation of new businesses and the elimination of existing businesses within California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Initial Statement of Reasons (ISOR).

As explained in the ISOR, it is possible that some individual businesses may be adversely affected by this regulatory action, even though overall there should be no significant adverse economic impact on businesses as a whole. Therefore, the Executive Officer finds that the adoption of this regulatory action may have a significant adverse impact on some businesses. The Executive Officer has considered proposed alternatives that would lessen any adverse economic impact on business 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 11346.5(a)(3)(B), 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 or businesses 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.0. Box 2815, Sacramento, CA 95812, or 2020 L Street, 5th Floor, Sacramento, CA 95814, no later than 12:00 noon, March 22, 1995, 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

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, 41712 and 42400-42403 of the Health and Safety Code.

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, 2020 L Street, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

for James D. Boyd
Executive Officer

Date: JAN 24 1995