REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM ANTIPERSPIRANTS AND DEODORANTS

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SUBCHAPTER 8.5. CONSUMER PRODUCTS

Article 1. Antiperspirants and Deodorants

§ 94500. Applicability.

Except as provided in Section 94503, this article shall apply to any person who sells, supplies, offers for sale, or manufactures antiperspirants or deodorants for use in the state of California.

NOTE: Authority cited: Sections 39600, 39601, and 41712, Health and Safety Code.

§ 94501. Definitions.

For the purpose of this article, the following definitions apply:

(a) "Aerosol Product" means a pressurized spray system that dispenses antiperspirant or deodorant ingredients.

(b) "Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

(c) "Colorant" means any substance or mixture of substances, the primary purpose of which is to color or modify the color of something else.

(d) "Deodorant" means:

1) for products manufactured before January 1, 2006: any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

2) for products manufactured on or after January 1, 2006: any product including, but not limited to, aerosol, roll-ons, sticks, pumps, pads, creams, and squeeze-bottles, that indicates or depicts on the container or packaging, or on any sticker or label affixed thereto, that the product can be used on or applied to the human axilla to provide a scent and/or minimize odor.

(e) "Executive Officer" means the Executive Officer of the Air Resources Board, or his or her delegate.

(f) "Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components with a combined vapor pressure not in excess of 2 mm of Hg at 20°C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

(g) "High Volatility Organic Compound (HVOC)" means any organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20°C.

(h) "Manufacturer" means any person who imports, manufacturers, assembles, produces, packages, repackages, or relabels an antiperspirant or deodorant.

(i) "Medium Volatility Organic Compound (MVOC)" means any organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

(j) "Non-aerosol Product" means any antiperspirant or deodorant that is not dispensed by a pressurized spray system.

(k) "Roll-on Product" means any antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

(l) "Stick Product" means any antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

(m) "Volatile Organic Compound (VOC)" means any compound containing at least one atom of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, and excluding the following:

(1) methane,
methylene chloride (dichloromethane),
1,1,1-trichloroethane (methyl chloroform),
trichlorofluoromethane (CFC-11),
dichlorodifluoromethane (CFC-12),
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113),
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114),
chloropentafluoroethane (CFC-115),
chlorodifluoromethane (HCFC-22),
1,1,1-trifluoro-2,2-dichloroethane (HCFC-123),
1,1-dichloro-1-fluoroethane (HCFC-141b),

1-chloro-1,1-difluoroethane (HCFC-142b),
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124),
trifluoromethane (HFC-23),
1,1,2,2-tetrafluoroethane (HFC-134),
1,1,1,2-tetrafluoroethane (HFC-134a),
pentafluoroethane (HFC-125),
1,1,1-trifluoroethane (HFC-143a),
1,1-difluoroethane (HFC-152a),
trans-1,3,3,3-tetrafluoropropene (HFO-1234ze),
cyclic, branched, or linear completely methylated siloxanes,
the following classes of perfluorocarbons:

(A) cyclic, branched, or linear, completely fluorinated alkanes;
(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
(D) sulfur-containing perfluorocarbons with no unsaturations and with the sulfur bonds to carbon and fluorine, and

(2) the following low-reactive organic compounds which have been exempted by the U.S. EPA:
acetone,
ethane,
methyl acetate, and
parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).

NOTE: Authority cited: Sections 39600, 39601, and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, and 41712, Health and Safety Code.

§ 94502. Standards for Antiperspirants and Deodorants.

(a) Except as provided in Sections 94503 (Exemptions), 94503.5 (Innovative Products), 94505 (Variances) and 94567(a)(1)

person shall sell, supply, offer for sale, or manufacture for sale in California any antiperspirant or deodorant which, at the time of sale or manufacture, contains volatile organic compounds in excess of the limits specified in the following Tables of Standards, after the specified effective date, or after any date that has been specified by the Executive Officer pursuant to subsections (d)(2) or (d)(5):

(1) The following Table of Standards applies to products manufactured before January 1, 2001.

Table of Standards
For products manufactured before January 1, 2001
(percent volatile organic compounds by weight)

	Effective Dates							
	12/31/92		**1/1/95**		**1/1/97**		**1/1/99**	
	HVOC[a]	**MVOC[b]**	**HVOC[a]**	**MVOC[b]**	**HVOC[a]**	**MVOC[b]**	**HVOC[a]**	**MVOC[b]**
Aerosol Products in Compliance Plan[c]								
Antiperspirants	6	20			40	10	0	10
Deodorants	2	20			14	10	0	10
All Other Aerosol Products								
Antiperspirants	6	20	0	10				
Deodorants	2	20	0	10				
Non-Aerosol Products	0	0	0	0				

[a] High volatility organic compounds, i.e., any organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20 C.

[b] Medium volatility organic compounds, i.e., any organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20 C.

[c] These standards apply to aerosol products manufactured by companies that have submitted a compliance plan pursuant to Section 94502(d), which has been approved by the Executive Officer.

(2) The following Table of Standards applies to products manufactured beginning January 1, 2001.

Table of Standards
For products manufactured beginning January 1, 2001
(percent volatile organic compounds by weight)

	Effective Dates	
	1/1/01	
Aerosol Products	HVOC[a]	MVOC[b]
Antiperspirants	40	10
Deodorants	0	10
Non-Aerosol Products	0	0

[a] High volatility organic compounds, i.e., any organic compound that exerts a vapor pressure greater than 80 mm Hg when measured at 20 C.

[b] Medium volatility organic compounds, i.e., any organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20 C.

(b) No person shall sell, supply, offer for sale, or manufacture for sale in California any antiperspirant or deodorant which contains any of the following ozone-depleting compounds: CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-113 (1,1,2-trichloro-1,2,2-trifluoroethane), CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane), CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane), halon 1301 (bromotrifluoromethane), halon 2404 (dibromotetrafluoroethane), HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane), HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane), HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane), 1,1,1-trichloroethane, and carbon tetrachloride.

(c) No person shall sell, supply, offer for sale, or manufacture for sale in California any antiperspirant or deodorant which contains any compound that has been identified by the ARB in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 7, Section 93000 as a toxic air contaminant.

(d) Special Requirements for Aerosol Manufacturers. This subsection (d) applies only to aerosol antiperspirant and deodorant products manufactured before January 1, 1999.

(1) A manufacturer of aerosol products may submit to the Executive Officer a compliance plan which describes how the manufacturer will achieve compliance with the requirements of Section 94502(a) for aerosol products.

(2) For each aerosol manufacturer who submits a compliance plan pursuant to subsection (d)(1), the Executive Officer shall suspend the 1/1/1995 requirements of section 94502(a) for aerosol products until a date on or before January 1, 1999, if the compliance plan demonstrates to the Executive Officer's satisfaction that the manufacturer is making good faith efforts, either independently or as part of a cooperative effort with other manufacturers, to develop aerosol products that will comply with the requirements of section 94502(a) in accordance with a schedule which is reasonably likely to enable the manufacturer to produce an acceptable aerosol product which complies with these requirements by a date on or before January 1, 1999. Before reaching a decision to suspend the requirements of Section 94502(a), the Executive Officer may request an aerosol manufacturer to modify the compliance plan to include additional information.

(3) In order to qualify for a suspension under subsection (d)(2), the compliance plan submitted by the manufacturer must contain all of the following:

(A) A compliance schedule setting forth the sequence and respective dates for all key events in the process of developing aerosol products complying with the requirements of Section 94502(a).

(B) A commitment by each manufacturer which specifies that:

1. No later than January 1, 1997, the manufacturer will complete reformulation of aerosol antiperspirant and deodorant products to meet the 1/1/1997 standards specified in Section 94502(a) for aerosol products in a compliance plan.

2. No later than January 1, 1997 the manufacturer will cease manufacturing products for use in California that do not comply with the 1/1/1997 standards specified in Section 94502(a) for aerosol products in a compliance plan.

3. No later than January 1, 2000 the manufacturer will cease to sell, supply, or offer for sale of all products manufactured prior to January 1, 1997 that do not comply with the 1/1/1997 standards specified in Section 94502(a) for aerosol products in a compliance plan.

(C) For each manufacturer, technical detail and information on the progress each manufacturer has made and the effort each plans to make to comply with both the 1/1/1997 and 1/1/1999 HVOC standards specified in Section 94502(a) for aerosol products in a compliance plan, including individual company timetables with "milestones" or increments of progress which allow progress to be measured. The technical information shall be sufficiently detailed to allow individual manufacturer's compliance efforts to be monitored including, at a minimum, the following information:

1. Documentation of past, planned and ongoing research to meet the 1/1/1997 HVOC standards. Documentation will include data to support whether the 1/1/1997 standards represent the lowest achievable HVOC content, by whatever method or technology is chosen by the manufacturer. If hydrofluorocarbon-152a ("HFC-152a") is a part of the technology to be used by the manufacturer, the information shall include, at a minimum: the manufacturer's current HFC-152a allocation for any use; the supply of HFC-152a to meet the manufacturer's needs for the aerosol antiperspirant and deodorant market; an indication as to whether the amount specified is needed to cover national or California sales; manufacturer's efforts to date to receive necessary allocations; time-frame to receive allocations; the actual path to compliance, including information on the types of formulations to be tested, formulation data, prototype testing, toxicity and stability tests, packaging and valve testing, safety and efficacy testing, consumer market testing and consumer acceptance, management decision for go-ahead, large-scale production, and availability to consumer; critical path identification; the expected date of aerosol antiperspirant and deodorant production that meets the 1/1/1997 standards; and a back-up plan that describes the manufacturer's actions should HFC-152a not be available in sufficient quantities.

   If a compliance method or technology other than the use of HFC-152a is chosen, the information will include at a minimum: actual path to compliance, including information on the types of formulations to be tested, formulation data, prototype testing, toxicity and stability tests, packaging and valve testing, safety and efficacy testing, consumer market testing and consumer acceptance, management decision for go-ahead, large-scale production, and availability to consumer; critical path identification; expected date to produce aerosol antiperspirants and deodorants that meet the 1/1/1997 HVOC standards; and a back-up plan describing the manufacturer's actions should the chosen compliance method or technology not succeed.

2. A description of past, ongoing, and planned research efforts to achieve the 1/1/1999 HVOC standards. The information required will be the same as for the 1/1/1997 HVOC standards, as described in Section 94502(d)(3)(C) above. This information will also include a detailed description of the pursued technologies, current status of this technology, and the feasibility of attaining the 1/1/1999 standards. The documentation will outline key events and a timetable in the development of products to meet the 1/1/1999 HVOC standards and alternative plans if the technology does not develop as expected.

3. A list of products which each individual manufacturer will be producing under this compliance plan.

(4) A manufacturer who has received a suspension pursuant to subsection (d)(2) shall submit annual updates to the compliance plan to the Executive Officer on January 1, 1995, January 1, 1996, January 1, 1997, January 1, 1998, and January 1, 1999. These updates shall describe any changes or revisions that should be made to the compliance plan, based on any changed circumstances that have occurred since the submittal of the compliance plan or the last update. A manufacturer who has received a suspension pursuant to subsection (d)(2) shall also notify the Executive Officer in writing within 10 days after the failure of the manufacturer to meet any increment of progress specified in the compliance plan, or in any annual update to the compliance plan, and the likely effect of that failure on the ability of the manufacturer to comply with Section 94502(a) by the date specified by the Executive Officer pursuant to subsection (d)(2).

(5) Within 120 days after each compliance plan update is due, or within 120 days after notification by a manufacturer pursuant to subsection (d)(4), the Executive Officer shall determine whether the manufacturer is continuing to make good faith efforts to develop aerosol products that will comply with the requirements of section 94502(a) in accordance with a schedule which is reasonably likely to enable the manufacturer to produce an acceptable aerosol product which complies with these requirements. If the Executive Officer determines that the manufacturer is not making such good faith efforts, the Executive Officer shall withdraw the suspension effective immediately after upon written notification of the withdrawal to the manufacturer. Any antiperspirant or deodorant product manufactured prior to the date on which the manufacturer is notified that the suspension is withdrawn may be sold, supplied, or offered for sale up to three years after the effective date of the suspension withdrawal.

(6) A manufacturer may request a public hearing to review any decision made by the Executive Officer pursuant to subsections (d)(2) and (d)(5). The hearing shall be held in accordance with the procedures specified in Title

17, California Code of Regulations, Division 3, Chapter 1, Subchapter 1, Article 4 (commencing with Section 60040).

(e) Notwithstanding the provisions of Section 94502(a), an antiperspirant or deodorant product manufactured prior to each of the effective dates specified for that product in the Table of Standards may be sold, supplied, or offered for sale up to three years after each of the specified effective dates. In addition, an aerosol antiperspirant or deodorant product manufactured prior to any compliance date specified by the Executive Officer pursuant to Section 94502(d)(2) may be sold supplied, or offered for sale up to three years after the specified compliance date. This subsection (e) does not apply to any antiperspirant or deodorant product which does not display on the product container or package the date on which the product was manufactured, or a code indicating such date.

NOTE: Authority cited: Sections 39600, 39601 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000 and 41712, Health and Safety Code.

§ 94503. Exemptions.

(a) This article shall not apply to any person who manufactures antiperspirants or deodorants in California for shipment and use outside of California.

(b) The requirements of Section 94502(a) shall not apply to fragrances and colorants up to a combined level of 2 percent by weight contained in any antiperspirant or deodorant.

(c) The requirements of Section 94502(a) shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20^{o}C.

(d) The medium volatility organic compound (MVOC) content standards specified in Section 94502 (a), shall not apply to ethanol.

NOTE: Authority cited: Sections 39600, 39601, and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, and 41712, Health and Safety Code.

§ 94503.5 Innovative Products.

(a) The Executive Officer shall exempt an antiperspirant or deodorant product from the requirements of Section 94502(a) if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

(1) the VOC emissions from a representative antiperspirant or deodorant product which complies with the VOC standards specified in Section 94502(a), or

(2) the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC standards specified in Section 94502(a). VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times VOC_{STD} \div VOC_{NC}$$

Where:

E_R = The VOC emissions from the noncomplying representative product, had it been reformulated.

E_{NC} = The VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD} = The VOC standard specified in 94502(a).

VOC_{NC} = The VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the Executive Officer.

(b) For the purposes of this section, “representative antiperspirant or deodorant product” means an antiperspirant or deodorant product which meets all of the following criteria:

(1) the representative product shall be subject to the same VOC limit in Section 94502(a) as the innovative product,

(2) the representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made.

(3) the representative product shall have at least similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

(c) A manufacturer shall apply in writing to the Executive Officer for any exemption claimed under subsection (a). The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide any information necessary to enable the Executive Officer to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for

determining the VOC content. All information submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in Title 17, California Code of Regulation, Sections 91000-91022.

(d) Within 30 days of receipt of the exemption application the Executive Officer shall determine whether an application is complete as provided in Section 60030(a), Title 17, California Code of Regulations.

(e) Within 90 days after an application has been deemed complete, the Executive Officer shall determine whether, under what conditions, and to what extent, an exemption from the requirements of Section 94502(a) will be permitted. The applicant and the Executive Officer may mutually agree to a longer time period for reaching a decision and additional supporting documentation may be submitted by the applicant before a decision has been reached. The Executive Officer shall notify the applicant of the decision in writing and specify such terms and conditions that are necessary to insure that emissions from the product will meet the emissions reductions specified in subsection (a), and that such emissions reductions can be enforced.

(f) In granting an exemption for a product the Executive Officer shall establish conditions that are enforceable. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates and any other parameters determined by the Executive Officer to be necessary. The Executive Officer shall also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, and sampling and laboratory procedures.

(g) For any product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the Executive Officer in writing within 30 days of any change in the product formulation or recommended product usage directions, and shall also notify the Executive Officer within 30 days if the manufacturer learns of any information which would alter the emissions estimates submitted to the Executive Officer in support of the exemption application.

(h) If VOC standards are lowered for a product category through any subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subsection (h), shall have no force and effect as of the effective date of the modified VOC standard. This subsection (h) shall not apply to those innovative products which have VOC emissions less than the appropriate lowered VOC standard and for which a written notification of the product's emissions status versus the lowered VOC standard has been submitted to and approved by the Executive Officer at least 60 days before the effective date of such standard.

(i) If the Executive Officer believes that an antiperspirant or deodorant product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subsection (a), the Executive Officer may modify

or revoke the exemption as necessary to assure that the product will meet these criteria. The Executive Officer shall not modify or revoke an exemption without first affording the applicant an opportunity for a public hearing held in accordance with the procedures specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 1, Article 4 (commencing with Section 60040), to determine if the exemption should be modified or revoked.

NOTE: Authority cited: Sections 39600, 39601 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000 and 41712, Health and Safety Code.

§ 94504. Administrative Requirements.

(a) Labeling.

(1) No later than three months after the effective date of this article, each manufacturer of an antiperspirant or deodorant subject to this article shall clearly display on each container of antiperspirant or deodorant, the date on which the product was manufactured, or a code indicating such date. If a manufacturer uses a code indicating the date of manufacture, an explanation of the code must be filed with the Executive Officer in advance of the code's use by the manufacturer.

(2) Location of Labeling Information: The date or date-code information required by subsection (a)(1) shall be located in the container so that it is readily observable without disassembling any part of the container or packaging.

(3) Defacing of Containers: No person shall erase, alter, deface or otherwise remove or make illegible any date or date-code from any regulated product container without the express authorization of the manufacturer.

(b) Reporting.

(1) Upon 90 days written notice each manufacturer subject to this article shall submit to the Executive Officer the following information:

(A) the brand name for each antiperspirant or deodorant product;

(B) the owner of the trademark or brand name;

(C) the product forms (aerosol, pump, liquid, solid, etc.);

(D) the California annual sales in pounds per year and the method used to calculate California annual sales;

(E) the total VOC (as defined in Section 94501(m)) content in percent by weight which: (a) has a vapor pressure of 2.0 mm Hg or less at 20^{o} C, or (b) consists of more than 10 carbon atoms, if the vapor pressure is unknown;

(F) the total HVOC and MVOC content and type (as defined in Section 94502(a)) in percent by weight;

(G) the percent by weight of VOC, water, solids, propellant, and any compounds that are exempt from the definition of VOC specified in section 94501;

(H) any additional information necessary to determine volatile organic compound emissions from any antiperspirant or deodorant products.

(2) All information submitted by manufacturers pursuant to Section 94504(b) shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations, Sections 91000-91022.

Note: Authority cited: Sections 39600, 39601, 41511 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, 41511 and 41712, Health and Safety Code.

§ 94505. Variances.

(a) Any person who cannot comply with the requirements set forth in Section 94502, because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Executive Officer for a variance. The variance application shall set forth:

(1) the specific grounds upon which the variance is sought;

(2) the proposed date(s) by which compliance with the provisions of Section 94502 will be achieved, and

(3) a compliance report reasonably detailing the method(s) by which compliance will be achieved.

(b) Upon receipt of a variance application containing the information required in subsection (a), the Executive Officer shall hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in Section 94502 is necessary and will be permitted. A hearing shall be initiated no later than 75 days after receipt of a variance application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to every person who requests such notice, not less than 30 days prior to the hearing. The notice shall state that the parties may, but need not be, represented by counsel at the hearing. At least 30 days prior to the hearing, the variance application shall be made available to the public for inspection. Information submitted to the Executive Officer by a variance applicant may be claimed as confidential, and such information shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations, Sections 91000-91022. The Executive Officer may consider such confidential

information in reaching a decision on a variance application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(c) No variance shall be granted unless all of the following findings are made:

(1) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with Section 94502 would result in extraordinary economic hardship;

(2) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance;

(3) that the compliance report proposed by the applicant can reasonably be implemented, and will achieve compliance as expeditiously as possible.

(d) Any variance order shall specify a final compliance date by which the requirements of Section 94502 will be achieved. Any variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Executive Officer, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(e) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.

(f) Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from requirements of Section 94502 after holding a public hearing in accordance with the provisions of subsection (b).

NOTE: Authority cited: Sections 39600, 39601 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000 and 41712, Health and Safety Code.

§ 94506. Test Methods.

(a)(1) Testing to determine the volatile organic compound of an antiperspirant or deodorant, or to determine compliance with the requirements of this article, shall be performed using Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds (ROC) in Aerosol Coating Products, adopted September 25, 1997, and as last amended on May 25, 2018, which is incorporated herein by reference. Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Executive Officer.

(2) In sections 3.4 and 3.6 of Air Resources Board (ARB) Method 310, a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content". This process is an integral part of testing procedure set forth in ARB Method 310, and is reproduced below:

Sections 3.4 and 3.6 of Air Resources Board Method 310

3.4 Initial Determination of VOC Content. The Executive Officer will determine the VOC content pursuant to sections 3.2 and 3.3. Only those components with concentrations equal to or greater than 0.1 percent by weight will be reported.

3.4.1 Using the appropriate formula specified in section 4.0, the Executive Officer will make an initial determination of whether the product meets the applicable VOC standards specified in ARB regulations. If initial results show that the product does not meet the applicable VOC standards, the Executive Officer may perform additional testing to confirm the initial results.

3.4.2 If the results obtained under section 3.4.1 show that the product does not meet the applicable VOC standards, the Executive Officer will request the responsible party to supply product formulation data. The responsible party shall supply the requested information. Information submitted to the ARB Executive Officer may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in Title 17, CCR, Division 3, Chapter 1, Subchapter 4 (Disclosure of Public Records), sections 91000 to 91022.

3.4.3 If the information supplied by the responsible party shows that the product does not meet the applicable VOC standards, then the Executive Officer will take appropriate enforcement action.

3.4.4 If the responsible party fails to provide formulation data as specified in section 3.4.2, the initial determination of VOC content under this section 3.4 shall determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of ARB regulations.

3.6 *Final Determination of VOC Content.* If a product's compliance status is not satisfactorily resolved under sections 3.4 and 3.5, the Executive Officer will conduct further analyses and testing as necessary to verify the formulation data.

3.6.1 If the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards,

then no enforcement action for violation of the VOC standards will be taken.

3.6.2 If the Executive Officer is unable to verify the accuracy of the supplied formulation data, then the Executive Officer will request the responsible party to supply information to explain the discrepancy.

3.6.3 If there exists a discrepancy that cannot be resolved between the results of Method 310 and the supplied formulation data, then the results of Method 310 shall take precedence over the supplied formulation data. The results of Method 310 shall then determine if the product is in compliance with the applicable VOC standards, and may be used to establish a violation of ARB regulations.

(b) Testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the volatile organic compound content from records of the amounts of constituents used to make the product. Compliance determination based on these records may not be used unless the responsible party of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

(c) No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and any other tests, processes, or records used in connection with product manufacture.

NOTE: Authority cited: Sections 39600, 39601 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000 and 41712, Health and Safety Code.

§ 94506.5 Federal Enforceability.

For purposes of federal enforceability of this article, the Environmental Protection Agency is not subject to approval determinations made by the Executive Officer under Sections 94503.5, 94505, or 94506. Within 180 days of a request from a person who has been granted an exemption or variance under Section 94503.5 or 94505, an exemption or variance meeting the requirements of the Clean Air Act shall be submitted by the Executive Officer to the Environmental Protection Agency for inclusion in the applicable implementation plan approved or promulgated by the Environmental Protection Agency pursuant to Section 110 of the Clean Air Act, 42 U.S.C., Section 7410. Prior to submitting an exemption granted under Section 94503.5 as a revision to the applicable implementation plan, the Executive Officer shall hold a public hearing on the proposed exemption. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent to the Environmental Protection Agency, every person who requests such notice, and to any person or group of persons whom the Executive Officer believes may be interested in the application. Within 30 days of the hearing the Executive Officer shall notify the applicant of the decision in writing as provided in Section 94503.5(f). The decision may approve, disapprove, or modify an exemption previously granted pursuant to Section 94503.5.

NOTE: Authority cited: Section 39600, 39601, 39602 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 39602, 40000 and 41712, Health and Safety Code.

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