

UPDATED INFORMATIVE DIGEST

Sections Affected: Amendments to sections 94500-94506, 94508, and 94521, Title 17, California Code of Regulations (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.

To date, four regulations have been adopted by the ARB pursuant to Health and Safety Code 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 approved the third regulation, the Alternative Control Plan for Consumer Products (the "ACP"; sections 94540-94555, Title 17, CCR). The ACP is a voluntary, market-based regulation which employs the concept of an aggregate emissions cap or "bubble" from a group of products. The ACP regulation is designed to lower manufacturers' overall costs of reducing VOC emissions from consumer products while, at the same time, achieving emission reductions equivalent to the existing regulations.

The fourth regulation, the Regulation to Reduce VOC Emissions from Aerosol Coatings and Amendments to the ACP (the "aerosol coatings regulation"), was adopted by the Board on March 23, 1995. The aerosol coatings regulation limits the VOC content for 35 categories of aerosol paints. As part of this regulatory action, the Board also amended the ACP regulation to allow aerosol coating products to be included in an ACP. When approved by the OAL, this aerosol coatings regulation will be contained in Title 17, CCR, sections 94520-94528.

In addition to the four regulations mentioned above, 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 is a multifaceted program composed of "near-term," "mid-term," and "long-term" control measures. The near-term SIP measures are comprised of our existing consumer products regulations (including the

antiperspirant and deodorant regulation), the ACP, and the aerosol coatings regulation. The mid-term measures consist of regulations that will cover additional product categories not currently subject to the existing program. The long-term measures rely on new technologies with components of market incentives and consumer education.

On November 15, 1994 the ARB submitted the consumer products regulations (including the antiperspirant and deodorant regulation) to the United States Environmental Protection Agency (U.S. EPA) as a SIP revision. On February 14, 1995 the regulations were approved by the U.S. EPA as revisions to the SIP.

Description of Regulatory Action

ARB staff prepared, and the Board approved, the following amendments:

- 1. The Antiperspirant and Deodorant Regulation was modified to allow all products to utilize the "ethanol exemption," rather than just "existing" products.**

The antiperspirant and deodorant regulation previously did not consider ethanol to be a Medium Volatility Organic Compound (MVOC) when determining the MVOC content of "existing" products. Existing products were defined in the regulation as products that were sold, supplied, offered for sale, or manufactured in California prior to January 1, 1990. By exempting ethanol in "existing" products only, the regulation may have given a competitive advantage to companies that were selling ethanol-containing products prior to January 1, 1990. The ARB staff proposed that the Board exempt ethanol in all products, not just existing ones, to address this competitiveness concern and to provide the same formulation flexibility to all manufacturers, not just those who had ethanol-containing products in the marketplace prior to January 1, 1990.

The Board also approved amendments to the reporting requirements in the antiperspirant and deodorant regulation to require manufacturers to report emissions every year, instead of every three years. This change will allow the ARB to track both High Volatility Organic Compound (HVOC) and MVOC emissions on a yearly basis and determine if there is any increase in either HVOC or MVOC emissions as a result of this regulatory action.

- 2. The "Special Requirements for Aerosol Manufacturers" in the Antiperspirant and Deodorant Regulation were modified.**

The Board approved several modifications to this section. The regulation previously specified that all compliance plans must have been submitted by January 1, 1994. The Board approved a modification removing the January 1, 1994 date restriction and allowing manufacturers to submit a compliance plan at any time. If the plan is approved by the Executive Officer, the manufacturer will be issued an Executive Order extending the time to meet the January 1, 1995 limits. This modification gives new manufacturers the same opportunities as those manufacturers who were selling antiperspirants and deodorants in the marketplace prior to January 1, 1994.

The Board also approved modifications to the Table of Standards to include new interim VOC limits for aerosol antiperspirants and deodorants that are subject to an approved compliance plan, effective January 1, 1997. These new interim limits are the same limits that manufacturers have voluntarily committed to achieve in all of the compliance plans that have previously been approved by the ARB.

Finally, the Board approved modifications to the Special Requirements for Aerosol Manufacturers to more clearly define the key components that must be included in a compliance plan in order for it to be approvable. These requirements are closely based on the provisions of the compliance plans that have already been submitted to, and approved by, the ARB. These modifications help to ensure that all compliance plans are reviewed in a fair and equitable manner, assist manufacturers in their efforts to develop approvable compliance plans, and allow ARB staff to monitor the progress of industry in meeting the HVOC and MVOC standards.

3. Additional Modifications to the Antiperspirant and Deodorant Regulation were approved by the Board.

In addition to the modifications described above, several other changes were made to the antiperspirant and deodorant regulation. These modifications were designed to provide clarification and to achieve consistency between the language of the antiperspirant and deodorant regulation and the consumer products regulation. The administrative requirements and test methods sections were modified to clarify that the regulation prohibits removing date code information from products, and prohibits falsifying or modifying production records to contain inaccurate information. Other modifications include a change to the variance section to allow variance periods of greater than one year, and a modification to the standards section which commits the Board to a public hearing by July 1, 1997, to review and consider any appropriate modifications to the January 1, 1999 zero HVOC limits for aerosol antiperspirant and deodorant products.

4. The Definition for "VOC" in the Antiperspirant and Deodorant Regulation, the Consumer Products Regulation, and the Aerosol Coatings Regulation were modified.

The VOC definitions in these three regulations were modified to make the ARB VOC definition more consistent with the U.S. EPA definition. In a recently finalized action, the U.S. EPA determined that linear, branched, or cyclic fully methylated siloxanes ("volatile methyl siloxanes" or "VMS"), parachlorobenzotrifluoride (PCBTF), and acetone are "negligibly photochemically reactive" and could provide beneficial alternative formulations for manufacturers seeking to meet VOC controls in states subject to ozone attainment requirements. The ARB staff completed an analysis of the impact of exempting VMS and PCBTF and agrees with the U.S. EPA findings for VMS and PCBTF. ARB staff therefore proposed, and the Board approved, exemption of VMS and PCBTF in recognition of their negligible contribution to ozone formation in California. However, because the U.S. EPA did not issue the final rule for acetone until June 16, 1995, the ARB staff had not completed its technical analysis for acetone prior to

publication of the August 1, 1995 Notice of Public Hearing, and the August 11, 1995 Initial Statement of Reasons for the proposed amendments. A detailed technical analysis in regard to acetone and ethane, specific to California conditions, was subsequently completed by ARB staff and the results were published on September 21, 1995. Staff presented its conclusions in regard to this analysis at the September 28, 1995 Board hearing. The Board approved the exemption of acetone and ethane from the VOC definitions in the consumer products regulations.