

## Board Administration and Regulatory Coordination Unit

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### Division 3. Air Resources Board

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### Chapter 1. Air Resources Board

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### Subchapter 8.5 Consumer Products

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### Article 4. Alternative Control Plan

#### § 94543. Requirements and Process for Approval of an ACP.

(a) To be considered by the Executive Officer for approval, an application for a proposed ACP shall be submitted in writing to the Executive Officer by the responsible ACP party and shall contain all of the following:

(1) an identification of the contact persons, phone numbers, names and addresses of the responsible ACP party which is submitting the ACP application and will be implementing the ACP requirements specified in the Executive Order;

(2) a statement of whether the responsible ACP party is a small business or a one-product business, as defined in section 94542(a)(17) and (25);

(3) a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category(ies) for each distinct ACP product that is proposed for inclusion in the ACP;

(4) for each proposed ACP product identified in subsection (a)(3) of this section, a demonstration to the satisfaction of the Executive Officer that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subsection (a)(4)(E) of this section. To provide this demonstration, the responsible ACP party shall do all of the following:

(A) provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the Enforceable Sales;

(B) determine the Enforceable Sales of each product using enforceable sales records as defined in section 94542(a)(11);

(C) demonstrate, to the satisfaction of the Executive Officer, the validity of the Enforceable Sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(D) calculate the percentage of the Gross California Sales, as defined in section 94542(a)(13) which is comprised of Enforceable Sales;

(E) determine which ACP products have Enforceable Sales which are 75.0% or more of the Gross California Sales. Only ACP products meeting this criteria shall be allowed to be sold in California under an ACP.

(5) for each of the ACP products identified in subsection (a)(4)(E) of this section, the inclusion of the following:

(A) legible copies of the existing labels for each product;

(B) the VOC Content and LVP Content for each product. The VOC Content and LVP Content shall be reported for two different periods, as follows:

1. the VOC and LVP contents of the product at the time the application for an ACP is submitted, and

2. any VOC and LVP contents of the product, which have occurred at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus/minus ten percent (+ 10.0%) of the VOC or LVP Contents reported in subsection (a)(5)(B)1. of this section.

(6) a written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than 5 working days after the date an Executive Order approving an ACP is signed by the Executive Officer.

(7) an operational plan covering all the products identified under subsection (a)(4)(E) of this section for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(A) an identification of the compliance periods and dates for the responsible ACP party to report the information required by the Executive Officer in the Executive Order approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party provided, however, that no compliance period shall be longer than 365 days. The responsible ACP party shall also choose the dates for reporting information such that all required VOC Content and Enforceable Sales data for all ACP products shall be reported to the Executive Officer at the same time and at the same frequency;

(B) an identification of specific enforceable sales records to be provided to the Executive Officer for enforcing the provisions of this article and the Executive Order approving an ACP. The enforceable sales records shall be provided to the Executive Officer no later than the compliance period dates specified in subsection (a)(7)(A) of this section;

# Board Administration and Regulatory Coordination Unit

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## Division 3. Air Resources Board

---

### Chapter 1. Air Resources Board

---

#### Subchapter 8.5 Consumer Products

---

##### Article 4. Alternative Control Plan

(C) for a small business or a one-product business which will be relying to some extent on Surplus Trading to meet its ACP Limits, a written commitment from the responsible ACP party(ies) that they will transfer the Surplus Reductions to the small business or one-product business upon approval of the ACP;

(D) for each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method(s) by which the VOC Content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method;

(E) the projected Enforceable Sales for each ACP product at each different VOC Content for every compliance period that the ACP will be in effect;

(F) a detailed demonstration showing the combination of specific ACP reformulations or Surplus Trading (if applicable) that is sufficient to ensure that the ACP Emissions will not exceed the ACP Limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or Surplus Trading are expected to occur, and the extent to which the VOC Contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in section 94542(a)(1) and (a)(2) for projecting the ACP Emissions and ACP Limits during each compliance period. This demonstration shall also include all VOC Content levels and projected Enforceable Sales for all ACP products to be sold in California during each compliance period;

(G) a certification that all reductions in the VOC Content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent the provisions of this article;

(H) written explanations of the date-codes that will be displayed on each ACP product's container or packaging;

(I) a statement of the approximate dates by which the responsible ACP party plans to meet the applicable VOC standards for each product in the ACP;

(J) an operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile any shortfalls in any and all cases, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

1. a clear and convincing demonstration of how shortfalls of up to 5%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP Limit will be completely reconciled within 90 working days from the date the shortfall is determined;

2. a listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection (a)(7)(J);

3. a commitment to provide any record or information requested by the Executive Officer to verify that the shortfalls have been completely reconciled.

(8) a statement, signed by a legal representative for the responsible ACP party, that all information and operational plans submitted with the ACP application are true and correct.

(b)(1) In accordance with the time periods specified in section 94544, the Executive Officer shall issue an Executive Order approving an ACP which meets the requirements of this article. The Executive Officer shall specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in section 94509 or the VOC standards specified in section 94522, whichever are applicable. The ACP shall also include:

- (A) only those ACP products for which the Enforceable Sales are at least 75.0% of the Gross California Sales, as determined in subsection (a)(4)(E) of this section.

- (B) a reconciliation of shortfalls plan meeting the requirements of this article;

- (C) operational terms, conditions, and data to be reported to the Executive Officer to ensure that all requirements of this article are met.

(2) The Executive Officer shall not approve an ACP submitted by a responsible ACP party if the Executive Officer determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products or the requirements for aerosol coating products (specified in sections 94507-

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 8.5 Consumer Products**

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### **Article 4. Alternative Control Plan**

94517 and sections 94520-94528, Title 17, California Code of Regulations), that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

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.

#### REFERENCE