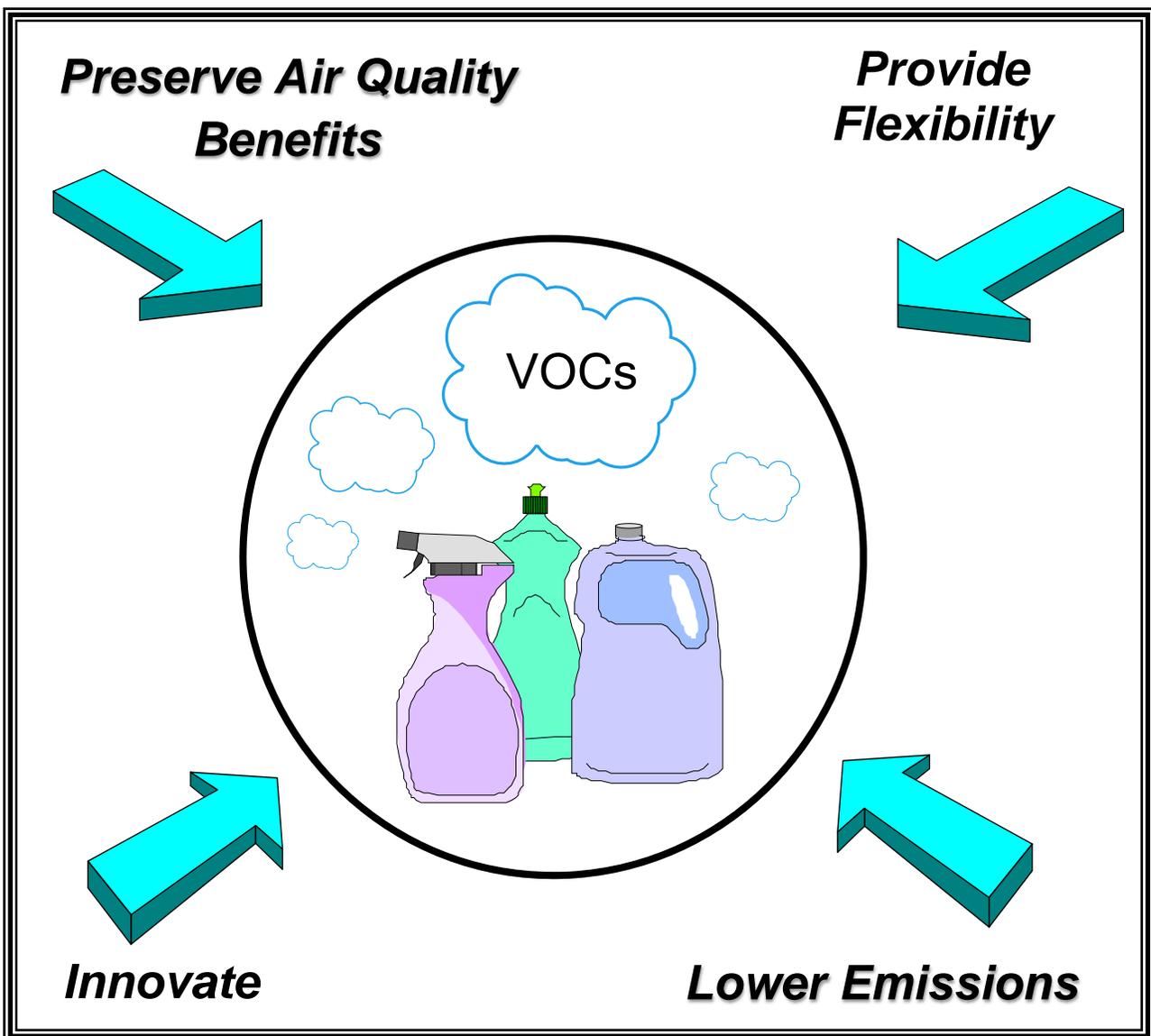


California Environmental Protection Agency



**INNOVATIVE PRODUCT EXEMPTION
APPLICATION GUIDANCE**



Legal Disclaimer

ARB's Consumer Products regulations, sections 94500-94575 (title 17, California Code of Regulations), is a series of regulations that sets volatile organic compound (VOC) limits for numerous product categories. For certain regulated categories, the regulation also sets prohibitions or limits on toxic compounds and compounds with high global warming potential values. ARB staff has prepared the Innovative Product Exemption Application Guidance Document (Guidance Document) to describe the application process in a user-friendly format. Unlike the regulation itself, the Guidance Document does not have the force of law. It is intended to and cannot establish new requirements beyond those that are already in the regulation, and it does not supplant, replace or amend any of the legal requirements of the regulations. Conversely, any omission or truncation of regulatory requirements found within this Guidance Document does not relieve manufacturers of their legal obligation to fully comply with all requirements of the regulation.

Table of Contents

<u>Section</u>	<u>Page</u>
I. <u>Introduction</u>	1
II. <u>General Information</u>	2
1. What is an innovative product?	2
2. What is the innovative products provision?	2
3. Why was the innovative products provision included in the regulations?	2
III. <u>Application Procedure</u>	3
1. How do I apply for an innovative product exemption?	3
2. What do I include in my application?	3
3. How do I choose a "representative" product?	4
4. How do I determine the emissions from a non-complying representative product had it been reformulated to comply?	5
5. What kind of supporting documentation is needed?	6
6. When is a statistical analysis necessary?	7
7. Can I have a pre-review of my application?	7
8. Can my application include more than one product?	8
9. Will there be a public hearing?	8
IV. <u>Processing the Application</u>	9
1. What happens after my application is received by ARB?	9
2. Will a public hearing be held?	10
3. What about confidentiality?	11
V. <u>Post Approval</u>	12
1. What if the formulation is changed?	12
2. Are exemptions transferable?	12
3. What happens if the VOC standard changes?	12
4. Can an exemption be revoked?	13
VI. <u>Examples of Innovative Products</u>	14

Table of Contents (Cont'd)

Appendices

- A. Section 94511 (Title 17, California Code of Regulations, Consumer Products Regulation)
- B. Confidential Information
- C. Sample Table of Contents for Supporting Documentation

SECTION I

INTRODUCTION

The California Air Resources Board (ARB or the "Board") has adopted five consumer products regulations. These regulations are: the Regulation for Reducing Volatile Organic Compound Emissions from Antiperspirants and Deodorants (**Antiperspirants and Deodorants Regulation**, title 17, California Code of Regulations (CCR), sections 94500-94506.5); the Regulation for Reducing Volatile Organic Compound Emissions from Consumer Products (**Consumer Products Regulation**, title 17, CCR, sections 94507-94517); the Regulation for Reducing Volatile Organic Compound Emissions from Aerosol Coating Products (**Aerosol Coating Products Regulation**, title 17, CCR, sections 94520-94528); the Alternative Control Plan Regulation for Consumer Products and Aerosol Coating Products (**Alternative Control Plan Regulation**, title 17, CCR, sections 94540-94555); and the Consumer Products' Hairspray Credit Program Regulation (**Hairspray Credit Program Regulation**, title 17, CCR, sections 94560-94575). The current regulations are available at <http://www.arb.ca.gov/consprod/regs/regs.htm>.

The purpose of this Guidance Document is to provide guidance in applying for an innovative product exemption. The exemption provision is found in section 94511 of the Consumer Products Regulation (shown in Appendix A) or, identically, in section 94503.5 of the Antiperspirant and Deodorant Regulation. The innovative products provision allows an alternative to compliance with the VOC standards. This is a departure from the traditional "command and control" approach where performance standards such as VOC content limits must be met. To better understand this provision and the application process, this Guidance Document has been prepared. Sections II through V provide a series of questions and answers (Q&As) to the most commonly asked questions about the provision. Section VI provides some examples of possible "innovative" products.

If there are any questions about the information in this document or the language in the innovative products provision, you are encouraged to contact **Dr. David Edwards, Manager of the Implementation Section, Consumer Products and Air Quality Assessment Branch**, Air Quality Planning and Science Division, at **(916) 323-4887**, or **dedwards@arb.ca.gov**.

SECTION II

GENERAL INFORMATION

1. **WHAT IS AN INNOVATIVE PRODUCT?**

An innovative product is a product that exceeds the VOC content standards in the Consumer Products Regulation or the Antiperspirant and Deodorant Regulation, yet results in less VOC emissions compared to a "representative consumer product" of the same product category which complies with the VOC limits in the Table of Standards in section 94509 (a) of the Consumer Products Regulation and section 94502 (a) of the Antiperspirant Deodorant Regulation (VOC standards). An innovative product may result in lower emissions than a representative product due to special features such as a more efficient application technique, a greater percentage of active ingredients, or more effective active ingredients. Section VI provides examples of some possible "innovative products".

2. **WHAT IS THE INNOVATIVE PRODUCTS PROVISION?**

The innovative products provision is included in both the Consumer Products Regulation and the Antiperspirant and Deodorant Regulation. The provision provides an alternative to complying with the VOC Table of Standards in section 94509(a) of the Consumer Products Regulation and section 94502(a) of the Antiperspirant and Deodorant Regulation. To use this alternative, the manufacturer must demonstrate by clear and convincing evidence that the use of the innovative product will result in fewer VOC emissions than a representative product that complies with the applicable VOC standard.

3. **WHY WAS THE INNOVATIVE PRODUCTS PROVISION INCLUDED IN THE REGULATIONS?**

The innovative products provision was included in the Consumer Products Regulation and the Antiperspirant and Deodorant Regulation to provide flexibility to industry in complying with the regulation. ARB realizes that there may be some cases where a unique product with VOC content above the standard could result in lower emissions than a complying product due to the special features of the product. The innovative products provision provides manufacturers with the opportunity to market otherwise noncomplying innovative products if they can demonstrate the special features of their product allow it to result in lower emissions than a product that complies with the applicable VOC standards.

SECTION III

APPLICATION PROCEDURE

1. **HOW DO I APPLY FOR AN INNOVATIVE PRODUCT EXEMPTION? IS THERE A COST TO APPLY?**

There is no cost to apply. A manufacturer must simply apply for the exemption by supplying data demonstrating that the product meets the criteria of the innovative products provision in section 94511 of the Consumer Products Regulation or, if applicable, in section 94503.5 of the Antiperspirant and Deodorant Regulation.

The manufacturer should send an application in writing to:

Ravi Ramalingam, Chief
Consumer Products and Air Quality
Assessment Branch, AQPS
California Air Resources Board
P. O. Box 2815
Sacramento, CA 95812
ATTN: Innovative Product Application

2. **WHAT DO I INCLUDE IN MY APPLICATION?**

Per section 94511(c) of the Consumer Products Regulation, Innovative Product applications must include basic information about the company and product. Be sure to include the full company name, street address, company contacts, telephone and facsimile numbers, and email address. Product information includes the full product name, variations of the product (e.g. different fragrances or hold levels for hairspray), product form, the primary function of the product, application method, and the recommended dilution if it is a concentrate. Photographs or labels from the innovative products should also be included. However, actual samples of the product are usually not needed.

The application must also contain supporting documentation, as discussed in Q&A Section III.5, that 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 emissions from a representative consumer product which complies with the VOC standards, or (2) the emissions from a noncomplying representative product "had it been reformulated" to meet the applicable VOC standard. For a discussion of how to determine the emissions from a noncomplying product "had it been reformulated", refer to Q&A Section III.4.

Finally, the application should contain methods that will allow ARB staff to verify that the product is in compliance with the innovative products provision.

A sample table of contents listing some of the information that may be submitted in the application is shown in Appendix C.

3. **HOW DO I CHOOSE A “REPRESENTATIVE” PRODUCT?**

A representative product is defined in section 94511(b) in the Innovative Product provision of the Consumer Products Regulation and should be a product that is typical of the product category under consideration. In order to ensure that an appropriate representative product is chosen, three criteria have been established in the innovative products provisions (section 94511 or 94503.5). First, the representative product must be subject to the same VOC limit. Second, it must be of the same product form (i.e. aerosol, liquid, paste, etc.) as the innovative product, (the product that is listed in the Innovative Product Exemption application), except in cases where the innovative product is a new form that does not exist in the category. Finally, the representative product must have at least similar efficacy compared to other products of the same category based on tests generally accepted for that product category by the consumer products industry.

In addition, the representative product should be designed to provide a similar function compared to the innovative product listed in the application. For instance, a bathroom cleaner designed to clean mold and mildew should be compared to a similar product, not a toilet bowl cleaner designed to remove water deposits. It is also desirable for the representative product to have demonstrated consumer acceptance. Therefore, a product that holds a significant share of the market would be preferable to a product that is sold in limited quantities or is a "niche" product which is geared to a more specific purpose or group of consumers. Finally, the representative product should not have any features that may cause it to result in excessive VOC emissions. For instance, a hairspray chosen as a representative product should not have an excessive spray rate as compared to other products on the market.

As a general rule, products that meet the VOC standards in the regulation by virtue of the exemptions for "existing or grandfathering" products should not be chosen as representative products. These "grandfathered" products include existing products from the antiperspirant and deodorant category and the personal fragrance category. Section 94503 of the Antiperspirant and Deodorant Regulation exempts ethanol in "existing" products from the medium volatility organic compound (MVOC) content standards. Similarly, in section 94510 of the Consumer Products Regulation exempts existing personal fragrance products

and products "in development on or before April 1, 1992" from the applicable VOC standards. For these product categories, a "grandfathered" product allowed a higher VOC content and due to these exemptions would not be an appropriate choice as a representative product. These "grandfathered" products have a large amount of VOC emissions relative to other complying products in the category that do not utilize these exemptions. For these categories, a representative product may be a product that complies with the applicable VOC standards (or a noncomplying product had it been reformulated to comply), or an alternative approach may be proposed that complies with the requirements of the innovative products provision and will result in verifiable emission reductions.

An innovative product application must include justification for the representative product chosen. Information to demonstrate that a product is representative may include efficacy data demonstrating that the product has at least similar efficacy compared to other products in the same category, market share data, spray rate values, and VOC content.

Finally, it is important that the same representative product be used throughout the application. In other words, the representative product used in the physical laboratory testing should also be used in the efficacy testing, consumer testing, and any other testing comparing the innovative product to the representative product.

4. **HOW DO I DETERMINE THE EMISSIONS FROM A NONCOMPLYING REPRESENTATIVE PRODUCT HAD IT BEEN REFORMULATED TO COMPLY?**

It may not always be preferable to compare the emissions from an "innovative" product to the emissions from a complying product for the following reasons: before the regulation's VOC limits take effect, there may be few complying products in some categories; manufacturers may not be as familiar with the complying products as they are with their own noncomplying products, or those of major competitors; some manufacturers may not be able to determine the VOC content of complying products. Therefore, per section 94511(a)(2) of the Innovative Products provision in the Consumer Products Regulation, manufacturers may be allowed to compare the emissions from their innovative products to the emissions from a hypothetical product that meets the VOC standard (i.e., the noncomplying product had it been reformulated). To clarify how the emissions are to be determined from this hypothetical complying product, an equation has been provided. The equation, shown on the next page, calculates the VOC emissions from a noncomplying product "had it been reformulated", or E_R . E_R is determined by:

$$E_R = E_{NC} \times [\text{VOC}_{\text{STD}}/\text{VOC}_{\text{NC}}] \quad (\text{Equation 4-1})$$

(1) determining the VOC emissions from an actual noncomplying product, E_{NC} ;
 (2) multiplying this figure by the percent VOC standard VOC_{STD} ; and
 (3) dividing by the percent VOC of the actual noncomplying product, VOC_{NC} . In other words, Equation (4-1) determines the emissions that would have occurred from the noncomplying product had it met the VOC standard, all other factors being equal.

In some cases, use of the above equation may not be appropriate. For example, in cases where VOCs are chemically transformed to non-VOCs, emissions may be dependent on the chemical processes. As stated in section 94511(a)(2) of the Innovative Products provision in the Consumer Products Regulation, a manufacturer may use an alternative method to determine E_R if the manufacturer can demonstrate to ARB that Equation (4-1) would yield inaccurate results.

5. **WHAT KIND OF SUPPORTING DOCUMENTATION IS NEEDED?**

Due to the nature of the innovative products provision, ARB staff cannot know the exact information that will be required to show that a product is eligible for the exemption. However, ARB staff can provide some general guidelines. Supporting documentation should include VOC content and other formulation data, since any exemption will be based on the specific formulation of the innovative product. Additionally, a detailed discussion of the formulation may also be necessary in cases where the formulation itself is the innovative feature of the product that allows its use to result in lower emissions.

Laboratory testing demonstrating product performance and emissions levels will also be necessary. Such testing will generally be performed to document that the innovative features of the product allow it to satisfactorily complete its desired function with less VOC emissions, under laboratory conditions. For example, an application for an innovative hairspray may include experimental data measuring the spray rate of the product in grams per second. The application may also include curl retention data demonstrating that the innovative product has equivalent hold compared to the representative product.

Consumer use studies are usually necessary to demonstrate that the product will result in less VOC emissions during actual use. This is an important aspect of the application, since consumer use habits could be such that the innovative features of the product fail to produce a reduction in VOC emissions, although there is a technical basis for an emission reduction. The testing or research may

be conducted by the manufacturer or a consultant. However, when consultants are used, manufacturers should keep in mind that ARB will need access to all supporting documentation, including raw data. Manufacturers must also ensure that the results of the consumer testing are valid by carefully designing testing procedures and choosing representative populations.

Finally, all information necessary to establish enforceable conditions for granting the exemption must be provided. For instance, test methods used to determine VOC content or other physical data must be fully described and reproducible. It must be made clear where records of consumer testing or other studies can be obtained for inspection by ARB.

6. WHEN IS A STATISTICAL ANALYSIS NECESSARY?

A statistical analysis should be performed on any set of data which has uncertainty associated with it. This is especially important for consumer tests, where data is often highly variable. The analysis should include the percent confidence level that the value in question will fall within the desired range.

Manufacturers should be aware that if the emissions from the innovative product are only slightly less than the emissions from the representative product, then the "room" for variability in the consumer usage values and other data in the application is small.

7. CAN I HAVE A PRE-REVIEW OF MY APPLICATION?

Yes. It is a good idea to consult with ARB staff about approach and consumer studies you are planning before proceeding. Pre-application meetings or teleconferences are strongly recommended to ensure manufacturers thoroughly understand the rationale of the innovative product exemption. It is also important for both the applicant and ARB staff to agree upon the selection of an appropriate representative product and the design of any consumer use studies. Of course, without all of the details in the final application submittal, general approval of a plan methodologies, or protocols does not guarantee that an exemption will be granted. In addition, it is important to note that having a pre-review meeting does not preclude ARB staff from requesting additional information during the formal review process.

8. CAN MY APPLICATION INCLUDE MORE THAN ONE PRODUCT?

In general, separate applications should be submitted for each product. However, products that are essentially identical, with only minor variations in color, fragrance, or some other ingredients may be submitted together in an application. The products must be subject to the same physical testing, consumer studies, or other supporting documentation. Manufacturers are advised to contact ARB staff before planning to submit more than one product in the same application.

9. WILL THERE BE A PUBLIC HEARING?

There will only be a public hearing if the person requesting an exemption specifically requests that it be submitted by ARB's Executive Officer to the United States Environmental Protection Agency (U.S. EPA), as stated in section 94517 of the Consumer Products Regulation (section 94506.5 of the Antiperspirant and Deodorant Regulation), "Federal Enforceability". If the applicant does not specifically request that the exemption be submitted to the U.S. EPA, a public hearing will not be held.

SECTION IV

PROCESSING OF APPLICATIONS

1. **WHAT HAPPENS AFTER MY APPLICATION IS RECEIVED BY ARB?**

After the application is received, it will go through the following process in accordance with section 94511 of the Consumer Products Regulation, or section 94503.5 of the Antiperspirant and Deodorant Regulation:

- (1) Within 30 days after the application is received, ARB's Executive Officer or his designee will determine whether the application is complete. If there are deficiencies in the application, the manufacturer will be notified in writing that the application is not complete and is denied. The written determination will identify the application deficiencies. The application may be resubmitted after the deficiencies have been addressed.
- (2) After the application is deemed complete, the Executive Officer or his designee will determine within 90 days whether, under what conditions, and to what extent, an exemption will be granted. The applicant and the Executive Officer may mutually agree to a longer time period for reaching a decision if additional supporting documentation is needed. The Executive Officer will notify the applicant of the decision in writing and will issue an Executive Order specifying the terms or conditions necessary to ensure that the product continues to meet the requirements of the innovative products provision.
- (3) The applicant must provide any information necessary to enable the Executive Officer or his designee to establish enforceable conditions for granting the exemption pursuant to sections 94511(c) and 94503.5.

As stated in section 94517 (and section 94506.5), "Federal Enforceability", U.S. EPA is not subject to approval determinations made by ARB. If a manufacturer requests that an innovative product exemption be submitted to the U.S. EPA, a public hearing will be required. The process is as follows:

- (1) Before the exemption is submitted to U.S. EPA, a public hearing will be held. 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 will also be submitted to the U.S. EPA and other interested parties.

The hearing will be a formal public hearing. The hearing officer will be the Executive Officer or his designee. At the hearing, the manufacturer will present evidence to ARB staff indicating that the product under consideration meets the criteria of the innovative product provision. The manufacturer will also be asked to respond to questions from the hearing participants. After the hearing, ARB staff will prepare a report describing the information presented at the hearing and the comments made. The report will also recommend whether the previously approved exemption should be approved, disapproved or modified.

- (2) Within 30 days of the hearing, the Executive Officer will notify the applicant of the decision in writing. The decision may approve, disapprove, or modify an innovative product exemption previously granted.
- (3) Within 180 days of a request from a person who has been granted an innovative product exemption, an exemption meeting the requirements of the Clean Air Act will be submitted by the Executive Officer to the U.S. EPA.

2. WILL A PUBLIC HEARING BE HELD?

A public hearing typically is not held. However, a person who has been granted an innovative product exemption may request that the exemption be submitted to the U.S. EPA for purpose of "Federal Enforceability", which will trigger a public hearing.

3. **WHAT ABOUT CONFIDENTIALITY?**

Confidential material supplied to ARB in the application process or during the public hearing will be handled in accordance with Title 17, California Code of Regulations, sections 91000-91022 and the California Public Records Act (Government Code Sections 6250 et seq.). For more information, see Appendix B. Manufacturers must clearly indicate what information is to be treated as confidential. After an innovative product exemption has been granted, it is highly recommended that manufacturers supply ARB with a copy of their complete application with confidential material separated or redacted (blacked out). Under the Public Records Act, non-confidential material must be made available to any member of the public who asks to see it. To facilitate ARB compliance with these requests and to insure that there is no miscommunication about exactly what portions of an application are confidential, we strongly recommend that the above procedure be followed by applicants.

SECTION V

POST APPROVAL

1. **WHAT IF THE FORMULATION IS CHANGED?**

In general, the exemption is no longer valid once the formulation has been changed. The Executive Officer must be notified within 30 days of any change in the product formulation or recommended product usage directions. The Executive Officer must also be notified within 30 days if the manufacturer learns of any information, which would alter the emission estimates submitted to the Executive Officer in support of the exemption application.

One exception is for changes that fall within the specifications in the Executive Order. When an innovative products exemption is granted, the applicant will be issued an Executive Order which establishes the specifications of the product. In some cases, the Executive Order may permit minor variations in formulation that would not nullify the exemption or require that the Executive Officer be notified. A good example would be the minimal change in formulation when raw material or ingredients are provided by a different supplier.

2. **ARE EXEMPTIONS TRANSFERABLE?**

In accordance with section 94511 of the Consumer Products Regulation, exemptions are not transferable. When an innovative products exemption is granted, an Executive Order will be issued. The Executive Order is issued only to the applicant. Therefore, if a company is sold, or if it sells its interest in a product line containing products that have received the innovative products exemption, the new owner or licensee must apply for the exemption. However, in most cases, it is anticipated that the data in the original application could be cited.

3. **WHAT HAPPENS IF THE VOC STANDARD CHANGES?**

After a standard is lowered, the innovative product exemption is no longer valid except for those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Executive Officer at least 60 days before the effective date of the new standard.

4. **CAN AN EXEMPTION BE REVOKED?**

Yes. In accordance with section 94511(i) in the Consumer Products Regulation, if the Executive Officer of ARB believes that a consumer product no longer meets the criteria for an innovative product, the EO may modify or revoke the exemption. However, before modifying or revoking the exemption, the applicant will be provided with an opportunity for a public hearing. Some of the possible reasons that an exemption could be revoked include a change in formulation without reapplying for the exemption or a change in the VOC standard such that the product is no longer in compliance.

SECTION VI

EXAMPLES OF INNOVATIVE PRODUCTS

Following are examples of possible innovative products, including a brief discussion of why they may qualify as innovative. Also discussed is some of the supporting information that would be crucial to demonstrating that the products are "innovative". These are examples given only to aid in the understanding of what may constitute an innovative product. As mentioned earlier, due to the nature of the innovative products provision it is impossible to know the exact information that would be required to show that a product qualifies for the innovative product exemption.

The examples below illustrate products that might qualify as "innovative" for the following reasons: (1) the product delivers the active ingredient more efficiently, allowing less product to be used; (2) the product contains more active ingredient or a more effective active ingredient, allowing less product to be used; and (3) the product contains more active ingredient or a more effective active ingredient, allowing the product to last longer. These are not the only ways to qualify a product as "innovative", but merely examples of products that may qualify if supported by clear and convincing documentation.

1. Product delivers the active ingredient more efficiently, requiring that less product be used

Example 1: A hairspray has a modified spray system designed to reduce overspray and spray rate.

In this example, a hairspray dispenser has been modified to have a high "transfer efficiency", meaning that more of the product actually reaches the surface of the hair. However, in spite of the higher transfer efficiency, manufacturers should investigate the possibility that consumers may spray the product for the same duration of time as with previously used products out of habit. Therefore, it may be necessary to reduce the spray rate as well so that consumers will use less of the product per application while spraying the product for the same duration of time. In this example, consumer usage studies would be a key part of the application. It would be necessary to demonstrate that consumers use less of the product by an amount sufficient to offset the higher VOC content of the product. Statistical analysis of this usage data would be critical. For instance, the manufacturer may demonstrate with a confidence level of 95 percent that the product will result in fewer emissions than the representative product. Other important information would include data demonstrating the transfer efficiency, spray rate and VOC content.

2. Product contains a more active ingredient or a more effective active ingredient requiring that less product be used.

Example 1: A hairspray with higher resin content.

In this example the higher resin content should allow consumers to spray less because resin is the ingredient that holds the hair in place. However, as in the example above, consumers may spray their hair for the same duration of time out of habit. Therefore, it may also be necessary to reduce the spray rate so that consumers apply about the same amount of resin while spraying their hair the same amount of time as usual. As in the previous example, consumer usage studies including statistical analysis would be critical to demonstrating compliance with the innovative products provision.

Example 2: An aerosol or pump spray air freshener with a stronger fragrance or higher concentration of fragrance.

With hand-sprayed air fresheners, consumers control the amount of fragrance delivered. In some cases, a stronger fragrance or higher concentration of fragrance in a product will allow less product to be delivered while producing the desired effect. For this type of innovative product, where usage is very dependent on the perceived strength of the fragrance, consumer studies, including statistical analysis, would be critical to demonstrating that the actual use of the product will result in less emissions. Other necessary data would include studies documenting the increased strength of the fragrance and VOC content data.

Example 3: A cleaning product that contains a more effective active ingredient.

In this example, a cleaning product contains active ingredients that are more effective, allowing the use of less product for a given task. Consumer studies and statistical analysis of the usage data would have to document that the less product is in fact used, resulting in less VOC emissions than a representative product. Efficacy tests showing that the product is more effective than a representative product under normal consumer usage also be necessary.

3. Product contains a more active ingredient or a stronger active ingredient, allowing the product to last longer.

Example 1: A "maintenance" air freshener with a stronger fragrance or higher concentration of fragrance, and control of the evaporation rate. A maintenance air freshener is designed to provide a constant level of scent over an extended period of time, typically a month. The physical design of the product and ambient conditions determine the release rate of the fragrance and solvents. In this example the product has a stronger fragrance or a higher concentration of fragrance than a typical product and a means of reducing the release rate. One approach to show that it is "innovative" is to demonstrate that it provides the same level of scent for a given room (volume) over a longer time period, while emitting less VOC emissions per hour or day than a representative product that meets the VOC content limit. Formulation data, physical (evaporation rate) studies and consumer research would be required to estimate the "level of scent" and the product life.

Appendix A

§ 94511. Innovative Products (Note: this provision is also described in section 94503.5 of the Antiperspirant and Deodorant Regulation)

(a) The Executive Officer shall exempt a consumer product from the VOC limits specified in section 94509(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 consumer product which complies with the VOC limits specified in section 94509(a), or

(2) the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in section 94509(a). VOC emissions shall be calculated using the following equation:

$$E_R = E_{NC} \times \text{VOC}_{STD} \div \text{VOC}_{NC}$$

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 limit specified in 94509(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 consumer product” means a consumer product which meets all of the following criteria:

(1) the representative product shall be subject to the same VOC limit in section 94509(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 reduction of 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 Regulations, 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 94509(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 ensure 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 the VOC limits specified in section 94509(a) 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 applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Executive Officer at least 60 days before the effective date of such limits.

(i) If the Executive Officer believes that a consumer 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.

Appendix B

CONFIDENTIAL INFORMATION

In accordance with Title 17, California Code of Regulations (CCR), sections 91000 to 91022, and the California Public Records Act (Government Code Sections 6250 et seq.), the information that a company provides to the Air Resources Board (ARB) may be released (1) to the public upon request, except trade secrets which are not emissions data or other information which is exempt from disclosure or the disclosure of which is prohibited by law, and (2) to the Federal Environmental Protection Agency (EPA), which protects trade secrets as provided in Section 114(c) of the Clean Air Act and amendments thereto (42 USC 7401 et seq.) and in federal regulations, and (3) to other public agencies provided that those agencies preserve the protections afforded information which is identified as a trade secret, or otherwise exempt from disclosure by law (section 91000, Title 17, CCR and Health and Safety Code Section 39660(e)).

Trade secrets as defined in Government Code Section 6254.7 are not public records and therefore will not be released to the public. However, the California Public Records Act provides that air pollution emission data are always public records, even if the data comes within the definition of trade secrets. On the other hand, the information used to calculate air pollution emissions may be withheld from the public if the information is a trade secret.

If any company believes that any of the information it may provide is a trade secret or otherwise exempt from disclosure under any other provision of law, it must identify it as such at the time of submission to ARB and must provide the name, address, and telephone number of the individual to be consulted if ARB receives a request for disclosure or seeks to disclose the data claimed to be confidential. ARB may ask the company to provide documentation of its claim of trade secret or exemption at a later date. Data identified as confidential will not be disclosed unless ARB determines, in accordance with the above referenced regulations, that the data do not qualify for a legal exemption from disclosure. The regulations establish substantial safeguards before any such disclosure.

Appendix C

Sample Table of Contents Supporting Documentation for Innovative Products Exemption

- I. Description of Product and Overview of Basis for Exemption.
 - A. Description of the product and its innovative features.
 - B. Overview of the basis for exemption.
 - C. Development plan showing length of time for milestones such as when product will be introduced to the California market.

- II. Emission Reduction Relative to Conventional Forms.
 - A. Physical Testing and Research to Document Basis for Emission Reduction Relative to conventional Forms.
 - 1. Who conducted the testing and research.
 - 2. What test methods and research designs were used.
 - 3. How results were calculated.
 - 4. Data analysis and conclusion.
 - 5. Error Analyses.
 - 6. Evaluation of advantages vs. disadvantages of innovative products as Compared to representative product (s).
 - 7. Criteria used in choosing the representative product(s).

 - B. Independent Consumer Research to Document Consumption Relative to Conventional Forms.
 - 1. Who conducted the research.
 - 2. What was the Research Design.
 - 3. Document used to retrieve data.
 - 4. How results were calculated.
 - 5. Data analysis and conclusion.
 - 6. Error analyses and statistical representativeness of data.
 - 7. Evaluation of advantages vs. disadvantages of innovative products as Compared to representative product (s).
 - 8. Criteria used in choosing the representative product (s).

III. Ancillary Issues.

- A. Any Impact on Recycling Effects/Solid Waste Minimization.
- B. Impacts on Energy use in the Transportation/Raw Material Procurement for the Innovative Product.
- C. Impact on Wastewater VOC Loading and Ultimate Emissions.
- D. Changes in Marketing and Distribution for Innovative Product and Expected Time to Clear Existing Product from Market.

IV. Manufacturer's Compliance.

- A. Method to Determine VOC Ingredient Level
- B. Method to Determine Application Usage Rate
- C. Method to Confirm Consumer-Use Patterns

V. Additional Information

- A. Designate Confidential Information and Provide Supporting Arguments
(May also be placed at front of report)