

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 2-91)

AGENCY

AIR RESOURCES BOARD

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
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Bill Jones
SECRETARY OF STATE

For use by Office of Administrative Law

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Office of Administrative Law

OFFICE OF ADMINISTRATIVE LAW
FEB 29 1995

Office of Administrative Law

NOTICE REGULATIONS

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. TOPIC OF NOTICE	Antiperspirants and Deodorants, Consumer Products & ACP	TITLE(S)	17	FIRST SECTION AFFECTED	94500	2. REQUESTED PUBLICATION DATE	August 11, 1995
3. CASE TYPE	<input checked="" type="checkbox"/> Notice re Proposed Regulatory Action	<input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	Robert C. Jenne			
TELEPHONE NUMBER		(916) 322-2884					
OAL USE ONLY	ACTION ON PROPOSED NOTICE			NOTICE REGISTER NUMBER	PUBLICATION DATE		
	<input checked="" type="checkbox"/> Approved as Submitted	<input type="checkbox"/> Approved as Modified	<input type="checkbox"/> Disapproved/Withdrawn	95,322	8/11/95		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

TITLE(S)	ADOPT	17
SECTIONS AFFECTED	AMEND	94500-94506, 94508 and 94521
	REPEAL	

2. TYPE OF FILING

Regular Rulemaking (Gov. Code, § 11346) Resubmittal Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) Emergency (Gov. Code, § 11346.1(b))

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

Print Only Other (specify)

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING-FILE (Cal. Code Regs. title 1, §§ 44 and 45)

October 6, 1995 - October 23, 1995

4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)

Effective 30th day after filing with Secretary of State Effective on filing with Secretary of State Effective other (Specify)

5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY N/A

Department of Finance (Form STD. 399) Fair Political Practices Commission State Fire Marshal

Other (Specify)

6. CONTACT PERSON

Robert C. Jenne, Senior Staff Counsel

TELEPHONE NUMBER (916) 322-2884

7. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE January 17, 1996

TYPED NAME AND TITLE OF SIGNATORY

Executive Officer

FINAL REGULATION ORDER

REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM ANTIPERSPIRANTS AND DEODORANTS

Amend Subchapter 8.5, Article 1. Antiperspirants and Deodorants, Sections 94500-94506, Title 17, California Code of Regulations, to read as follows:

[Note: The new text is shown in **bold/underline**, except within the Table of Standards, which, for clarity, is shown in **bold** only. Text to be removed is shown in ~~strikeout~~.]

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. Reference: Sections 39002, 39600, 40000, 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 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.

- (e) "Executive Officer" means the Executive Officer of the Air Resources Board, or his or her delegate.
- ~~(f)~~ Existing Product means any antiperspirant or deodorant formulation which was sold, supplied, offered for sale, or manufactured in California prior to January 1, 1990, or any identical antiperspirant or deodorant formulation which is sold, supplied, offered for sale, or manufactured in California by any person after January 1, 1990.
- ~~(f)(g)~~ "Fragrance" means any substance or mixture of substances, the primary purpose of which is to impart an odor or scent **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)(h)~~ "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)(i)~~ "Manufacturer" means any person or business entity that produces an antiperspirant or deodorant for sale in California **who imports, manufactures, assembles, produces, packages, repackages, or relabels an antiperspirant or deodorant.**
- ~~(i)(j)~~ "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)(k)~~ "Non-aerosol Product" means any antiperspirant or deodorant that is not dispensed by a pressurized spray system.
- ~~(k)(l)~~ "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)(m)~~ "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.
- ~~(n)~~ Volatile Organic Compound (VOC) means any compound containing at least one atom of carbon, except methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, ammonium carbonate, 1,1,1 trichloroethane, methylene chloride, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22), trifluoromethane (HFC-23), 1,1,1 trichloro-2,2,2-trifluoroethane (CFC-113), 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123), 1,1,1,2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane

(HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), and 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 only to carbon and fluorine.

(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),
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,

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 Section 94503, no 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 Table of Standards, after the specified effective date, or after any date that has been specified by the Executive Officer pursuant to subsections (e)(d)(2) or (e)(d)(5):

Table of Standards
(percent volatile organic compounds by weight)

Product Form	Effective Dates			
	Immediately upon the effective date of this article	12/31/1992	1/1/1995	
	HVOC ^{a/}	MVOC ^{b/}	HVOC ^{a/}	MVOC ^{b/}
Aerosol Product				
Antiperspirant current level ^{e/}	60	20	0	10
Deodorant current level ^{e/}	20	20	0	10
Non-aerosol product				
current level ^{e/}	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.

e/ Current level is the VOC content of each existing product by manufacturer, package type, and label.

[Note: For clarity, the new text within the table below is indicated in **bold**, rather than the **bold/underline** used in the rest of the document.]

**Table of Standards
(percent volatile organic compounds by weight)**

Effective Dates

12/31/92		1/1/95		1/1/97		1/1/99 ^d	
HVOC ^a	MVOC ^b	HVOC ^a	MVOC ^b	HVOC ^a	MVOC ^b	HVOC ^a	MVOC ^b

Aerosol Products in Compliance Plan ^c								
Antiperspirants	60	20			40	10	0	10
Deodorants	20	20			14	10	0	10
All Other Aerosol Products								
Antiperspirants	60	20	0	10				
Deodorants	20	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.
- ^d The Board will hold 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.

(b) ~~No existing product may be reformulated to increase either the product's total VOC content or total ethanol content. An existing product may be reformulated to reduce the product's total ethanol content or total VOC content, as long as the reformulation does not increase the product's total HVOC content.~~

(b)(e) 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 (1,1,1-trichloro-2,2,2-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)(d) 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)(e) Special Requirements for Aerosol Manufacturers

- (1) ~~On or before January 1, 1994, a~~ **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 **(e)(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. ~~The Executive Officer shall specify the date by which each manufacturer shall comply with the requirements of Section 94502(a) for aerosol products. This date shall be the earliest practicable date by which each manufacturer can comply with the requirements of Section 94502(a), based on all information contained in the compliance plan and any other information available to the Executive Officer,~~ **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 **(e)(d)(1)(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), including information on the development of substitute aerosol propellants, and the progress that has been made to test these propellants for toxicity and feasibility.

(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 July 1, 1998 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 (e)(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 (e)(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 (e)(d)(2).

- (5) Within ~~90~~ **120** days after each compliance plan update is due, or within ~~90~~ **120** days after notification by a manufacturer pursuant to subsection ~~(e)~~**(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 ~~by the date specified by the Executive Officer pursuant to subsection (e)(2)~~. If the Executive Officer determines that the manufacturer is not making such good faith efforts, the Executive Officer shall withdraw the suspension effective **immediately** ~~eighteen months 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 eighteen months 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 ~~(e)~~**(d)**(2) and ~~(e)~~**(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)~~**(f)** 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 eighteen months 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~~(e)~~**(d)**(2) may be sold, supplied, or offered for sale up to eighteen months after the specified compliance date. This subsection ~~(f)~~**(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 Sections 94502(a) and (b) 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°C.
- (d) The medium volatility organic compound (MVOC) content standards specified in Section 94502 (a), shall not apply to ethanol contained in existing products.

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 a consumer an antiperspirant or deodorant product from the requirements of Sections 94502(a) or 94502(b) 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 antiperspirant or deodorant product which complies with the VOC standards specified in Sections 94502(a) and 94502(b), 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) and 94502(b). VOC emissions shall be calculated using the following equation:

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

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 consumer~~ antiperspirant or deodorant product" means a consumer 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) and 94502(b) 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 Sections 94502(a) and 94502(b) 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 ~~(i)~~**(h)**, shall have no force and effect as of the effective date of the modified VOC standard. This subsection ~~(i)~~**(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 a ~~consumer~~ **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) ~~On or before April 1, 1991, and a~~ No later than March 1 of every ~~each third~~ year thereafter, each manufacturer subject to this article shall submit to the Executive Officer a written report. The report shall describe how the manufacturer will meet the requirements of Section 94502.

(2) The report submitted pursuant to subsection (b)(1) shall include 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(n)) content in percent by weight which: (a) has a vapor pressure of 2.0 mm Hg or less at 20° Centigrade, 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.

(3) Upon 90 days written notice, the Executive Officer may also require the manufacturer to supply any additional information necessary to determine volatile organic compound emissions from any antiperspirant or deodorant products that the Executive Officer may specify.

(4)(3) 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) No variance issued shall have a duration of more than one year.~~
- (e)(f) 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)(g) 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) Testing to determine the volatile organic compound content of an antiperspirant or deodorant, or to determine compliance with the requirements of this article, shall be performed using one or more of the following methods which are incorporated by reference herein: (1) Method 24-24A, Part 60, Title 40, Code of Federal Regulations, Appendix A, July 1, 1988; (2) Method 18, Federal Register 48, no. 202, October 18, 1983; (3) Method 1400, NIOSH Manual of Analytical Methods, Volume 1, February 1984; or (4) Environmental Protection Agency Method 8240 "GC/MS Method for Volatile Organics," September 1986. 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.
- (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 manufacturer 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 and 94505. 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.

FINAL REGULATION ORDER

REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM CONSUMER PRODUCTS

[Note: The new text is shown in bold/underline, and the text to be removed is shown in ~~strikeout~~.]

Amend Subchapter 8.5, Article 2. Consumer Products, section 94508(a)(90), Title 17, California Code of Regulations, to read as follows:

~~(90) "Volatile Organic Compound (VOC)" means any compound containing at least one atom of carbon, except methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, 1,1,1-trichloroethane, methylene chloride, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22), trifluoromethane (HFC-23), 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113), 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123), 1,1,1,2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), and 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 only to carbon and fluorine.~~

(90) "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:

- (A) ~~(X)~~
- 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),
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

(B) (2) the following low-reactive organic compounds which have been exempted by the U.S. EPA:

acetone,
ethane,
parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).

FINAL REGULATION ORDER

REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM AEROSOL COATING PRODUCTS

[Note: The new text is shown in bold/underline, and the text to be removed is shown in ~~strikeout~~.]

Amend Subchapter 8.5, Article 3. Aerosol Coating Products, section 94521(a)(62), Title 17, California Code of Regulations, to read as follows:

~~(62) "Volatile Organic Compound (VOC)" means any compound containing at least one atom of carbon, except methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, 1,1,1-trichloroethane, methylene chloride, trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22), trifluoromethane (HFC-23), 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113), 1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 2,2-dichloro-1,1,1-trifluoroethane (HCFC-123), 1,1,1,2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1-trifluoroethane (HFC-143a), 1,1-difluoroethane (HFC-152a), and 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 only to carbon and fluorine.~~

(62) "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:

- (A) ~~(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),
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

(B) ~~(2)~~

the following low-reactive organic compounds which have been exempted by the U.S. EPA:

acetone,

ethane,

parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene).