

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on rev)

For use by Secretary of State only

STD. 400 (REV. 2-91)

REGULAR

AGENCY: AIR RESOURCES BOARD AGENCY FILE NUMBER (if any)

OAL FILE NUMBERS: NOTICE FILE NUMBER 298-0922- REGULATORY ACTION NUMBER 0999-1001-055 EMERGENCY NUMBER PREVIOUS REGULATORY ACTION NUMBER

For use by Office of Administrative Law (OAL) RECEIVED FOR FILING SEP 22 '98 OCT 02 '98 Office of Administrative Law OFFICE OF ADMINISTRATIVE LAW

99 NOV 16 PM 3:45 Bill Jones SECRETARY OF STATE

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

1. TOPIC OF NOTICE LVP-VOC Definitions and Test Methods TITLE(S) 17 FIRST SECTION AFFECTED 94506(a) 2. REQUESTED PUBLICATION DATE October 2, 1998 3. NOTICE TYPE Notice Proposed Regulatory Action 4. AGENCY CONTACT PERSON Judy Tracy TELEPHONE NUMBER (916) 322-2884 OAL USE ONLY ACTION ON PROPOSED NOTICE Approved as Submitted Disapproved/Withdrawn NOTICE REGISTER NUMBER 98,407 PUBLICATION DATE 10/2/98

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) 17 ADOPT SECTIONS AFFECTED AMEND 94506, 94506.5, 94508, 94515, 94526 and the documents incorporated by Reference 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)

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 Judith G. Tracy, Staff Counsel TELEPHONE NUMBER (916) 322-2884

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 Michael P. Kenny, Executive Officer DATE October 1, 1999 TYPED NAME AND TITLE OF SIGNATORY

## FINAL REGULATION ORDER

### Proposed Amendments to the Test Methods Sections of the Antiperspirant and Deodorant Regulation, the Consumer Products Regulation, and the Aerosol Coatings Regulation

[Note: Changes to the regulatory language are shown below in **bold underline** to indicate additions and ~~**bold-strikeout**~~ to show deletions.]

Amend Sections 94506(a), 94506.5, 94508(a)(78), 94515(a), and 94526(a) of Title 17, California Code of Regulations, to read as follows:

#### §94506. Test Methods.

- (a)(1) 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 Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted ~~9/25/97~~ **September 25, 1997 and as last amended on September 3, 1999**, which is incorporated herein by reference. Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Executive Officer.
- (2) In sections 3.5 and ~~3.6~~ **3.7** of Air Resources Board (ARB) Method 310, a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content". This process is an integral part of testing procedures set forth in ARB Method 310, and is reproduced below:

#### Sections 3.5 and ~~3.6~~ **3.7** of Air Resources Board Method 310

- 3.5 *Initial Determination of VOC Content.* The Executive Officer will determine the VOC content pursuant to sections 3.2 and 3.3. Only those components with concentrations equal to or greater than 0.1 percent by weight will be reported.
- 3.5.1 Using the appropriate formula specified in section 4.0, the Executive Officer will make an initial determination of whether the product meets the applicable VOC standards specified in ARB regulations. If initial results show that the product does not meet the applicable VOC standards, the Executive Officer may perform additional testing to confirm the initial results.
- 3.5.2 If the results obtained under section 3.5.1 show that the product does not meet the applicable VOC standards, the Executive Officer will request the product manufacturer or responsible party to supply product formulation data. The manufacturer or responsible party shall supply the requested information. Information submitted to the ARB Executive Officer may be claimed as confidential; such

information will be handled in accordance with the confidentiality procedures specified in Title 17, California Code of Regulations, sections 91000 to 91022.

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

3.5.4 If the manufacturer or responsible party fails to provide formulation data as specified in section 3.5.2, the initial determination of VOC content under this section 3.5 shall determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of ARB regulations.

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

3.76.1 If the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards, then no enforcement action for violation of the VOC standards will be taken.

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

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

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NOTE: Authority cited: Sections 39600, 39601, 39607, 41511 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 39607, 40000, 41511 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, or 94506. Within 180 days of a request from a person who has been granted an exemption or variance under Section 94503.5 or 94505, an exemption or variance meeting the requirements of the Clean Air Act shall be submitted by the Executive Officer to the Environmental Protection Agency for inclusion in the applicable implementation plan

approved or promulgated by the Environmental Protection Agency pursuant to Section 110 of the Clean Air Act, 42 U.S.C., Section 7410. Prior to submitting an exemption granted under Section 94503.5 as a revision to the applicable implementation plan, the Executive Officer shall hold a public hearing on the proposed exemption. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice ~~Requestor 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: Sections 39600, 39601, 39602 and 41712, Health and Safety Code.  
Reference: Sections 39002, 39600, 39607, 40000, 41511 and 41712, Health and Safety Code.

#### §94508. Definitions.

(a) For the purpose of this article, the following definitions apply:

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(78) "LVP-VOC" means a chemical "compound" or "mixture" any compound that contains at least one carbon atom and meets one has either of the following:

(A) has a vapor pressure less than 0.1 mm Hg at 20° C, or as determined by ARB Method 310; or

(B) is a chemical "compound" with more than 12 carbon atoms, or a chemical "mixture" comprised solely of "compounds" with more than 12 carbon atoms, and the vapor pressure is unknown; or more than 12 carbon atoms, if the vapor pressure is unknown;

(C) is a chemical "compound" with a boiling point greater than 216° C, as determined by ARB Method 310; or

(D) is the weight percent of a chemical "mixture" that boils above 216° C, as determined by ARB Method 310.

For the purposes of the definition of LVP-VOC, chemical "compound" means a molecule of definite chemical formula and isomeric structure, and chemical "mixture" means a substance comprised of two or more chemical "compounds".

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

#### §94515. Test Methods.

- (a)(1) VOC content determination using ARB Method 310. Testing to determine compliance with the requirements of this article, shall be performed using Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted ~~9/25/97~~ September 25, 1997 and as last amended on September 3, 1999, which is incorporated herein by reference. Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Executive Officer.
- (2) In sections 3.5, ~~and 3.6, and 3.7~~ of Air Resources Board (ARB) Method 310, a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content". This process is an integral part of testing procedures set forth in ARB Method 310, and is reproduced below:

#### Sections 3.5, ~~and 3.6, and 3.7~~ of Air Resources Board Method 310

- 3.5 *Initial Determination of VOC Content.* The Executive Officer will determine the VOC content pursuant to sections 3.2 and 3.3. Only those components with concentrations equal to or greater than 0.1 percent by weight will be reported.
- 3.5.1 Using the appropriate formula specified in section 4.0, the Executive Officer will make an initial determination of whether the product meets the applicable VOC standards specified in ARB regulations. If initial results show that the product does not meet the applicable VOC standards, the Executive Officer may perform additional testing to confirm the initial results.
- 3.5.2 If the results obtained under section 3.5.1 show that the product does not meet the applicable VOC standards, the Executive Officer will request the product manufacturer or responsible party to supply product formulation data. The manufacturer or responsible party shall supply the requested information. Information submitted to the ARB Executive Officer may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in Title 17, California Code of Regulations, sections 91000 to 91022.
- 3.5.3 If the information supplied by the manufacturer or responsible party shows that the product does not meet the applicable VOC standards, then the Executive Officer will take appropriate enforcement action.
- 3.5.4 If the manufacturer or responsible party fails to provide formulation data as specified in section 3.5.2, the initial determination of VOC content under this section 3.5 shall

determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of ARB regulations.

**3.6 Determination of the LVP-VOC status of compounds and mixtures. This section does not apply to antiperspirants and deodorants or aerosol coatings products because there is no LVP-VOC exemption for these products.**

**3.6.1 Formulation data. If the vapor pressure is unknown, the following ASTM methods may be used to determine the LVP-VOC status of compounds and mixtures: ASTM D 86-96 (April 10, 1996), ASTM D 850-93 (April 15, 1993), ASTM D 1078-97 (July 10, 1997), and ASTM D 2879-97 (April 10, 1997), as modified in Appendix B to this Method 310, ASTM D 2887-97 (April 10, 1997) and ASTM E 1719-97 (March 10, 1997).**

**3.6.2 LVP-VOC status of "compounds" or "mixtures." The Executive Officer will test a sample of the LVP-VOC used in the product formulation to determine the boiling point for a compound or for a mixture. If the boiling point exceeds 216° C, the compound or mixture is an LVP-VOC. If the boiling point is less than 216° C, then the weight percent of the mixture which boils above 216° C is an LVP-VOC. The Executive Officer will use the nearest 5 percent distillation cut that is greater than 216° C as determined under 3.6.1 to determine the percentage of the mixture qualifying as an LVP-VOC.**

**3.6.3 Reference method for identification of LVP-VOC compounds and mixtures. If a product does not qualify as an LVP-VOC under 3.6.2, the Executive Officer will test a sample of the compound or mixture used in a products formulation utilizing one or both of the following: ASTM D 2879-97, as modified in Appendix B to this Method 310, and ASTM E 1719-97, to determine if the compound or mixture meets the requirements of Title 17, CCR, section 94508(a)(78)(A).**

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

**3.76.1** If the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards, then no enforcement action for violation of the VOC standards will be taken.

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

**3.76.3** If there exists a discrepancy that cannot be resolved between the results of Method 310 and the supplied formulation data, then the results of Method 310 shall take precedence over the supplied formulation data. The results of Method 310 shall then

determine if the product is in compliance with the applicable VOC standards, and may be used to establish a violation of ARB regulations.

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NOTE: Authority cited: Sections 39600, 39601, 39607, 41511 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 39607, 40000, 41511 and 41712, Health and Safety Code.

#### §94526. Test Methods.

Compliance with the requirements of this article shall be determined by using the following test methods, which are incorporated by reference herein. Alternative test methods which are shown to accurately determine the VOC content, exempt compound content, metal content, specular gloss, or acid content may also be used after approval in writing by the Executive Officer:

- (a)(1) VOC Content. The VOC content of all aerosol coating products subject to the provisions of this article shall be determined by the procedures set forth in "Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products," adopted ~~9/25/97~~ September 25, 1997 and as last amended on September 3, 1999.
- (2) In sections 3.5 and ~~3.6~~ 3.7 of Air Resources Board (ARB) Method 310, a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content". This process is an integral part of testing procedures set forth in ARB Method 310, and is reproduced below:

Sections 3.5 and ~~3.6~~ 3.7 of Air Resources Board Method 310

- 3.5 *Initial Determination of VOC Content.* The Executive Officer will determine the VOC content pursuant to sections 3.2 and 3.3. Only those components with concentrations equal to or greater than 0.1 percent by weight will be reported.
  - 3.5.1 Using the appropriate formula specified in section 4.0, the Executive Officer will make an initial determination of whether the product meets the applicable VOC standards specified in ARB regulations. If initial results show that the product does not meet the applicable VOC standards, the Executive Officer may perform additional testing to confirm the initial results.
  - 3.5.2 If the results obtained under section 3.5.1 show that the product does not meet the applicable VOC standards, the Executive Officer will request the product manufacturer or responsible party to supply product formulation data. The manufacturer or responsible party shall supply the requested information. Information submitted to the ARB Executive Officer may be claimed as confidential; such

information will be handled in accordance with the confidentiality procedures specified in Title 17, California Code of Regulations, sections 91000 to 91022.

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

3.5.4 If the manufacturer or responsible party fails to provide formulation data as specified in section 3.5.2, the initial determination of VOC content under this section 3.5 shall determine if the product is in compliance with the applicable VOC standards. This determination may be used to establish a violation of ARB regulations.

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

3.76.1 If the accuracy of the supplied formulation data is verified and the product sample is determined to meet the applicable VOC standards, then no enforcement action for violation of the VOC standards will be taken.

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

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

(b) Exempt Compounds. Compounds exempt from the definition of VOC shall be analyzed according to the test methods listed below:

(1) the exempt compound content of all aerosol coating products shall be determined by "Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products," adopted ~~9/25/97~~ **September 25, 1997 and as last amended on September 3, 1999**, which is incorporated herein by reference.

(2) the following classes of compounds will be analyzed as exempt compounds only if manufacturers specify which individual compounds are used in the product formulations and identify the test methods, which, prior to such analysis, have been approved by the Executive Officer of the ARB, and can be used to quantify the amounts of each exempt compound: cyclic, branched, or linear, completely fluorinated alkanes; cyclic, branched, or linear, completely fluorinated ethers with no saturations;

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

- (c) Metal Content. The metal content of metallic aerosol coating products shall be determined by South Coast Air Quality Management District (SCAQMD) Test Method ~~311~~ 318-95 "Determination of Weight Percent Elemental Metal in Coatings by X-ray Diffraction" July, 1996 (SCAQMD "Laboratory Methods of Analysis for Enforcement Samples" manual), June 1, 1991; ~~after removal of the propellant following the procedure in ASTM Method D 5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992, which is incorporated herein by reference.~~
- (d) Specular Gloss. Specular gloss of flat and nonflat coatings shall be determined by ASTM Method D 523-89, March 31, 1989, which is incorporated herein by reference.
- (e) Acid Content. The acid content of rust converters shall be determined by ASTM Method D 1613-91, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer, and Related Products, May 15, 1991, which is incorporated herein by reference. ~~after removal of the propellant following the procedure in ASTM Method D 5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992.~~
- (f) Lacquers. Lacquer aerosol coating products shall be identified according to the procedures specified in ASTM Method D 5043-90, "Standard Test Methods for Field Identification of Coatings," April 27, 1990, which is incorporated herein by reference.

NOTE: Authority cited: Sections 39600, 39601, 39607, 41511 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 39607, 40000, 41511 and 41712, Health and Safety Code.