STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 2-91)

AGENCY: Air Resources Board

AGENCY FILE NUMBER *(If any)*:

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
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For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
1995 JAN 24 PM 4:32	1995 NOV 21 PM 4:33
RECEIVED FOR FILING — PUBLICATION DATE: JAN 24 '95 FEB 3 '95	OFFICE OF ADMINISTRATIVE LAW
OFFICE OF ADMINISTRATIVE LAW	
Office of Administrative Law	

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

1. TOPIC OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Aerosol Coating Products Consumer Products ACP	17	94520	February 3, 1995

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER
[X] Notice re Proposed Regulatory Action [ ] Other	Robert C. Jenne	(916) 322-2884

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[X] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn	95, 5Z	2/3/95

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)	
17	ADOPT: 94520 through 94528
SECTIONS AFFECTED	AMEND: 94540 through 94543, 94547, 94550, 94551 and 94553
	REPEAL:

2. TYPE OF FILING

[X] 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)*

N/A

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

[ ] Effective 30th day after filing with Secretary of State [X] 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	TELEPHONE NUMBER
Robert C. Jenne	(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
	November 13, 1995

TYPED NAME AND TITLE OF SIGNATORY: James D. Boyd, Executive Officer

REGULATION FOR REDUCING VOLATILE ORGANIC COMPOUND EMISSIONS FROM AEROSOL COATING PRODUCTS

Add new Article 3, Aerosol Coating Products, sections 94520-94528, Title 17, California Code of Regulations, to read as follows:

SUBCHAPTER 8.5 CONSUMER PRODUCTS

Article 3. Aerosol Coating Products

94520. Applicability

This article shall apply to any person who sells, supplies, offers for sale, applies, or manufactures aerosol coating products for use in the state of California, except as provided in section 94523.

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

94521. Definitions

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

(1) "Adhesive" means a product used to bond one surface to another.

(2) "Aerosol Coating Product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marking applications.

(3) "Anti-Static Spray" means a product used to prevent or inhibit the accumulation of static electricity.

(4) "Art Fixative or Sealant" means a clear coating, including art varnish, workable art fixative, and ceramic coating, which is designed and labeled exclusively for application to paintings, pencil, chalk, or pastel drawings, ceramic art pieces, or other closely related art uses, in order to provide a final protective coating or to fix preliminary stages of artwork while providing a workable surface for subsequent revisions.

(5) "ASTM" means the American Society for Testing and Materials.

(6) "Auto Body Primer" means an automotive primer or primer surfacer coating designed and labeled exclusively to be applied to a vehicle body substrate for the purposes of corrosion resistance and building a repair area to a condition in which, after drying, it can be sanded to a smooth surface.

(7) "Automotive Bumper and Trim Product" means a product, including adhesion promoters and chip sealants, designed and labeled exclusively to repair and refinish automotive bumpers and plastic trim parts.

(8) "Automotive Underbody Coating" means a flexible coating which contains asphalt or rubber and is designed and labeled exclusively for use on the underbody of motor vehicles to resist rust, abrasion and vibration, and to deaden sound.

(9) "Aviation Propeller Coating" means a coating designed and labeled exclusively to provide abrasion resistance and corrosion protection for aircraft propellers.

(10) "Aviation or Marine Primer" means a coating designed and labeled exclusively to meet federal specification TT-P-1757.

(11) "Belt Dressing" means a product applied on auto fan belts, water pump belting, power transmission belting, and industrial and farm machinery belting to prevent slipping, and to extend belt life.

(12) "Cleaner" means a product designed and labeled primarily to remove soil or other contaminants from surfaces.

(13) "Clear Coating" means a coating which is colorless, containing resins but no pigments except flatting agents, and is designed and labeled to form a transparent or translucent solid film.

(14) "Coating Solids" means the nonvolatile portion of an aerosol coating product, consisting of the film forming ingredients, including pigments and resins.

(15) "Commercial Application" means the use of aerosol coating products in the production of goods, or the providing of services for profit, including touch-up and repair.

(16) "Corrosion Resistant Brass, Bronze, or Copper Coating" means a clear coating designed and labeled exclusively to prevent tarnish and corrosion of uncoated brass, bronze, or copper metal surfaces.

(17) "Distributor" means any person to whom an aerosol coating product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

(18) "Dye" means a product containing no resins which is used to color a surface or object without building a film.

(19) "Electrical Coating" means a coating designed and labeled exclusively as such, which is used exclusively to coat electrical components such as wire windings on electric motors to provide insulation and protection from corrosion.

(20) "Enamel" means a coating which cures by chemical cross-linking of its base resin and is not resoluble in is original solvent.

(21) "Engine Paint" means a coating designed and labeled exclusively to coat engines and their components.

(22) "Exact Match Finish, Engine Paint" means a coating which meets all of the following criteria: (1) the product is designed and labeled exclusively to exactly match the color of an original, factory-applied engine paint; (2) the product is labeled with the manufacturer's name for which they were formulated; and (3) the product is labeled with one of the following: (i) the original equipment manufacturer's (O.E.M.) color code number; (ii) the color name; or (iii) other designation identifying the specific O.E.M. color to the purchaser.

(23) "Exact Match Finish, Automotive" means a topcoat which meets all of the following criteria: (1) the product is designed and labeled exclusively to exactly match the color of an original, factory-applied automotive coating during the touch-up of automobile finishes; (2) the product is labeled with the manufacturer's name for which they were formulated; and (3) the product is labeled with one of the following: (i) the original equipment manufacturer's (O.E.M.) color code number; (ii) the color name; or (iii) other designation identifying the specific O.E.M. color to the purchaser. Not withstanding the foregoing, automotive clear coatings designed and labeled exclusively for use over automotive exact match finishes to replicate the original factory applied finish shall be considered to be automotive exact match finishes.

(24) "Exact Match Finish, Industrial" means a coating which meets all of the following criteria: (1) the product is designed and labeled exclusively to exactly match the color of an original, factory-applied industrial coating during the touch-up of manufactured products; (2) the product is labeled with the manufacturer's name for which they were formulated; and (3) the product is labeled with one of the following: (i) the original equipment manufacturer's (O.E.M.) color code number; (ii) the color name; or (iii) other designation identifying the specific O.E.M. color to the purchaser.

(25) "Executive Officer" means the Executive Officer of the Air Resources Board, or her or his delegate.

(26) "Flat Paint Products" means a coating which, when fully dry, registers specular gloss

less than or equal to 15 on an 85° gloss meter, or less than or equal to 5 on a 60° gloss meter, or which is labeled as a flat coating.

(27) "Flatting Agent" means a compound added to a coating to reduce the gloss of the coating without adding color to the coating.

(28) "Floral Spray" means a coating designed and labeled exclusively for use on fresh flowers, dried flowers, or other items in a floral arrangement for the purposes of coloring, preserving or protecting their appearance.

(29) "Fluorescent Coating" means a coating labeled as such, which converts absorbed incident light energy into emitted light of a different hue.

(30) "Glass Coating" means a coating designed and labeled exclusively for use on glass or other transparent material to create a soft, translucent light effect, or to create a tinted or darkened color while retaining transparency.

(31) "Ground Traffic/Marking Coating" means a coating designed and labeled exclusively to be applied to dirt, gravel, grass, concrete, asphalt, warehouse floors, or parking lots. Such coatings must be in a container equipped with a valve and sprayhead designed to direct the spray toward the surface when the can is held in an inverted vertical position.

(32) "High Temperature Coating" means a coating, excluding engine paint, which is designed and labeled exclusively for use on substrates which will, in normal use, be subjected to temperatures in excess of 400°F.

(33) "Hobby/Model/Craft Coating" means a coating which is designed and labeled exclusively for hobby applications and is sold in aerosol containers of 6 ounces by weight or less.

(34) "Ink" means a fluid or viscous substance used in the printing industry to produce letters, symbols or illustrations, but not to coat an entire surface.

(35) "Lacquer" means a thermoplastic film-forming material dissolved in organic solvent, which dries primarily by solvent evaporation, and is resoluble in its original solvent.

(36) "Layout Fluid" (or toolmaker's ink) means a coating designed and labeled exclusively to be sprayed on metal, glass or plastic, to provide a glare-free surface on which to scribe designs, patterns or engineering guide lines prior to shaping the piece.

(37) "Leather preservative or cleaner" means a leather treatment material applied exclusively to clean or preserve leather.

(38) "Lubricant" means a substance such as oil, petroleum distillates, grease, graphite,

silicone, lithium, etc. that is used to reduce friction, heat, or wear when applied between surfaces.

(39) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

(40) "Marine Spar Varnish" means a coating designed and labeled exclusively to provide a protective sealant for marine wood products.

(41) "Maskant" means a coating applied directly to a component to protect surface areas when chemical milling, anodizing, aging, bonding, plating, etching, or performing other chemical operations on the surface of the component.

(42) "Metallic Coating" means a topcoat which contains at least 0.5 percent by weight elemental metallic pigment in the formulation, including propellant, and is labeled as "metallic", or with the name of a specific metallic finish such as "gold", "silver", or "bronze."

(43) "Mold Release" means a coating applied to molds to prevent products from sticking to the surfaces of the mold.

(44) "Multi-Component Kit" means an aerosol spray paint system which requires the application of more than one component (e.g. foundation coat and top coat), where both components are sold together in one package.

(45) "Nonflat Paint Product" means a coating which, when fully dry, registers a specular gloss greater than 15 on an 85° gloss meter or greater then five on a 60° gloss meter.

(46) "Percent VOC By Weight" means the ratio of the weight of VOC to the total weight of the product contents expressed as follows:

Percent VOC By Weight = $(W_{voc} / W_{total}) \times 100$

Where:

(i) for products containing no water and no volatile compounds exempt from the definition of VOC: W_{voc} = the weight of volatile compounds;

(ii) for products containing water or exempt compounds: W_{voc} = the weight of volatile compounds, less water, and less compounds exempt from the VOC definition in this section 94521; and

(iii) W_{total} = the total weight of the product contents.

(47) "Photograph Coating" means a coating designed and labeled exclusively to be applied to finished photographs to allow corrective retouching, protection of the image,

changes in gloss level, or to cover fingerprints.

(48) "Pleasure Craft" means privately owned vessels used for noncommercial purposes.

(49) "Pleasure Craft Finish Primer/Surfacer/Undercoater" means a coating designed and labeled exclusively to be applied prior to the application of a pleasure craft topcoat for the purpose of corrosion resistance and adhesion of the topcoat, and which promotes a uniform surface by filling in surface imperfections.

(50) "Pleasure Craft Topcoat" means a coating designed and labeled exclusively to be applied to a pleasure craft as a final coat above the waterline and below the waterline when stored out of water. This category does not include clear coatings.

(51) "Primer" means a coating labeled as such, which is designed to be applied to a surface to provide a bond between that surface and subsequent coats.

(52) "Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or any other material from the same self-pressurized container or from a separate container.

(53) "Responsible Party" means the company, firm, or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was "manufactured for" or "distributed by", as noted on the label.

(54) "Retailer" means any person who sells, supplies, or offers aerosol coating products for sale directly to consumers.

(55) "Retail Outlet" means any establishment where consumer products are sold, supplied, or offered for sale, directly to consumers.

(56) "Rust Converter" means a product designed and labeled exclusively to convert rust to an inert material and which contains a minimum acid content of 0.5 percent by weight, and a maximum coating solids content of 0.5 percent by weight.

(57) "Shellac Sealer" means a clear or pigmented coating formulated solely with the resinous secretion of the lac beetle (*Laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(58) "Slip-Resistant Coating" means a coating designed and labeled exclusively as such, which is formulated with synthetic grit and used as a safety coating.

(59) "Spatter Coating/Multicolor Coating" means a coating labeled exclusively as such wherein spots, globules, or spatters of contrasting colors appear on or within the

surface of a contrasting or similar background.

(60) "Stain" means a coating which is designed and labeled to change the color of a surface but not conceal the surface.

(61) "Vinyl/Fabric/Leather/Polycarbonate Coating" means a coating designed and labeled exclusively to coat vinyl, fabric, leather, or polycarbonate substrates.

(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), and 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.

(63) "Webbing/Veiling Coating" means a coating designed and labeled exclusively to provide a stranded to spider webbed appearance when applied.

(64) "Weld-Through Primer" means a coating designed and labeled exclusively to provide a bridging or conducting effect for corrosion protection following welding.

(65) "Wood Stain" means a coating which is formulated to change the color of a wood surface but not conceal the surface.

(66) "Wood Touch-Up/Repair/Restoration" means a coating designed and labeled exclusively to provide an exact color or sheen match on finished wood products.

(67) "Working Day" means any day between Monday through Friday, inclusive, except for days that are federal holidays.

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

94522. Standards and Requirements for Aerosol Coating Products

(a)(1) Except as provided in sections 94523 and 94525, no person shall sell, supply, offer for sale, apply, or manufacture for use in California, any aerosol coating product which, at the time of sale, use, or manufacture, contains volatile organic compounds in excess of the limits specified in the following Table of Standards after the specified effective dates.

Table of Standards

Percent Volatile Organic Compounds by Weight[1]

Aerosol Coating Category	1/1/96	12/31/99
General Coatings		
Clear Coatings	67.0	40.0
Flat Paint Products	60.0	30.0
Fluorescent Coatings	75.0	45.0
Metallic Coatings	80.0	50.0
Nonflat Paint Products	65.0	30.0
Primers	60.0	30.0
Specialty Coatings		
Art Fixatives or Sealants	95.0	70.0
Auto Body Primers	80.0	50.0
Automotive Bumper and Trim Products	95.0	75.0
Aviation or Marine Primers	80.0	70.0
Aviation Propeller Coatings	84.0	75.0
Corrosion Resistant Brass, Bronze, or Copper Coatings	92.0	70.0
Exact Match Finishes:		
Engine Enamel	80.0	60.0
Automotive	88.0	60.0
Industrial	88.0	60.0
Floral Sprays	95.0	85.0
Glass Coatings	95.0	80.0
Ground Traffic/Marking Coatings	66.0	40.0
High Temperature Coatings	80.0	55.0

1 As specified in section 94522(c), for aerosol coating products containing methylene chloride, the VOC standards specified in this subsection (a) shall apply to the combined percent VOC and methylene chloride by weight.

Table of Standards

Percent Volatile Organic Compounds by Weight[1]

Aerosol Coating Category	1/1/96	12/31/99
Specialty Coatings (Cont'd)		
Hobby/Model/Craft Coatings:		
Enamel	80.0	70.0
Lacquer	88.0	70.0
Clear or Metallic	95.0	75.0
Marine Spar Varnishes	85.0	70.0
Photograph Coatings	95.0	70.0
Pleasure Craft Finish Primers Surfacers or Undercoaters	75.0	55.0
Pleasure Craft Topcoats	80.0	55.0
Shellac Sealers:		
Clear	88.0	70.0
Pigmented	75.0	60.0
Slip-Resistant Coatings	80.0	70.0
Spatter/Multicolor Coatings	80.0	60.0
Vinyl/Fabric/Leather/Polycarbonate	95.0	70.0
Webbing/Veil Coatings	90.0	70.0
Weld-Through Primers	75.0	60.0
Wood Stains	95.0	75.0
Wood Touch-Up,Repair or Restoration Coatings	95.0	75.0

1 As specified in section 94522(c), for aerosol coating products containing methylene chloride, the VOC standards specified in this subsection (a) shall apply to the combined percent VOC and methylene chloride by weight.

(a)(2) if an aerosol coating product is subject to both a general coating limit and a specialty coating limit, as listed in section 94522(a)(1), and the product meets all the criteria of the applicable specialty coating category as defined in section 94521, then the specialty coating limit shall apply instead of the general coating limit.

(b) **Sell-Through of Products**. Notwithstanding the provisions of section 94522(a), an aerosol coating product manufactured prior to each of the effective dates specified for that product in the Table of Standards may be sold, supplied, offered for sale, or applied for up to eighteen months after each of the specified effective dates. This subsection (b) does not apply to any product which: (1) is subject to the provisions of Bay Area Air Quality Management District Rule 8-49 and is sold, supplied, offered for sale, or applied within the Bay Area Air Quality Management District; or (2) does not

display on the product container or package the date on which the product was manufactured, or a code indicating such date.

(c) **Products Containing Methylene Chloride.** For any aerosol coating product containing methylene chloride, the VOC standards specified in section 94522(a) shall apply to the combined percent by weight of both volatile organic compounds, and methylene chloride, calculated as follows:

(Percent by weight VOC + Percent by weight methylene chloride) must be less than or equal to the applicable VOC standard

(d) **Products Containing Perchloroethylene or Ozone Depleting Substances.**

(1) After the effective date of this article, for any aerosol coating product for which standards are specified under section 94522(a), no person shall sell, supply, offer for sale, apply, or manufacture for use in California any aerosol coating product which contains perchloroethylene, or an ozone depleting substance identified by the Environmental Protection Agency in the Federal Register under 57 FR 33754, Appendices A and B, July 30, 1992. The requirements of this section 94522(d) shall not apply to (A) any existing product formulation that complies with the Table of Standards and was sold in California during calendar year 1992, or (B) any product formulation that was sold in California during calendar year 1992 that is reformulated to meet the Table of Standards, as long as the content of perchloroethylene, or ozone depleting substances, as identified in this section 94522(d), in the reformulated product does not increase.

(2) The requirements of section 94522(d)(1) shall not apply to any aerosol coating product containing perchloroethylene, or an ozone depleting substance as identified in section 94522(d)(1), that are present as impurities in a combined amount equal to or less than 0.01% by weight of the product.

(e) **Multicomponent Kits.** No person shall sell, supply, offer for sale, apply, or manufacture for use in California any multi-component kit, as defined in section 94521, in which the total weight of VOC and methylene chloride contained in the multi-component kit $(\text{Total VOC} + \text{MC})_{\text{actual}}$ is greater than the total weight of VOC and methylene chloride that would be allowed in the multi-component kit if each component product in the kit had separately met the applicable VOC standards $(\text{Total VOC} + \text{MC})_{\text{standard}}$ as calculated below:

$$(\text{Total VOC} + \text{MC})_{\text{actual}} = (\text{VOC}_1 \times W_1) + (\text{MC}_1 \times W_1) + (\text{VOC}_2 \times W_2) + (\text{MC}_2 \times W_2) + (\text{VOC}_n \times W_n) + (\text{MC}_n \times W_n)$$

$$(\text{Total VOC} + \text{MC})_{\text{standard}} = (\text{STD}_1 \times W_1) + (\text{STD}_2 \times W_2) + (\text{STD}_n \times W_n)$$

Where:
VOC = the percent by weight VOC of the component product
MC = the percent by weight methylene chloride of the component product
STD = the VOC standard specified in section 94522(a) which applies to the component product.
W = the weight of the product contents (excluding container)
Subscript 1 denotes the first component product in the kit
Subscript 2 denotes the second component product in the kit
Subscript n denotes any additional component product

(f) **Products Assembled by Adding Bulk Paint to Aerosol Containers of Propellant.** No person shall sell, supply, offer for sale, apply, or manufacture for use in the state of California any aerosol coating product assembled by adding bulk paint to aerosol containers of propellant, unless such products comply with the standards specified in section 94522(a).

(g) **Public Hearing on the 12/31/99 VOC Standards.** On or before December 31, 1998, the Air Resources Board shall conduct a noticed public hearing on the technological and commercial feasibility of achieving full compliance with the VOC limits specified for December 31, 1999. If the Board determines that it is not technologically or commercially feasible to achieve one or more of the specified VOC limits by December 31, 1999, the Board shall grant an extension of time to comply for up to five years. In granting an extension of time, the Board shall specify a final compliance date for each aerosol coating category that represents the earliest feasible date by which full compliance can be achieved. For each category the Board shall also determine the most stringent technologically and commercially feasible interim limit (or limits), and shall specify that such limit (or limits) shall be applicable during any extension of time granted by the Board. The Board may grant different extensions of time for different aerosol coating categories. The Board may also modify the final compliance limits as appropriate provided the final compliance limits achieve at least a 60 percent reduction in VOC emissions resulting from the use of aerosol coatings, calculated with respect to the 1989 baseline year.

(h) **Requirements for Lacquer Aerosol Coating Products.**

(1) Notwithstanding the provisions of Section 94522(a), lacquer aerosol coating products may be sold, supplied, offered for sale, applied, or manufactured for use in California with a combined VOC and methylene chloride content of up to 80 percent by weight until January 1, 1998.

(2) On or after January 1, 1998, all lacquer aerosol coating products sold, supplied, offered for sale, applied, or manufactured for use in California shall comply with the provisions of section 94522(a), except that lacquer aerosol coating

products manufactured prior to January 1, 1998 may be sold, supplied, offered for sale, or applied until July 1, 1999, as long as the product displays on the product container or package the date on which the product was manufactured or a code indicating such date.

(3) This subsection (h) does not apply to: (A) any lacquer coating product not clearly labeled as such, or (B) any lacquer coating product which is sold, supplied, offered for sale, applied, or manufactured for use in the Bay Area Air Quality Management District (BAAQMD) and is subject to BAAQMD Rule 8-49, or (C) any lacquer coating product that meets the definition of "clear coating" specified in section 94521.

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

94523. Exemptions

(a) This article shall not apply to aerosol lubricants, mold releases, automotive underbody coatings, electrical coatings, cleaners, belt dressings, anti-static sprays, layout fluids and removers, adhesives, maskants, rust converters, dyes, inks, and leather preservatives or cleaners.

(b) This article shall not apply to any aerosol coating product manufactured in California for shipment and use outside of California.

(c) The provisions of this article shall not apply to a manufacturer, distributor, or responsible party who sells, supplies, or offers for sale in California an aerosol coating product that does not comply with the VOC standards specified in Section 94522(a), as long as the manufacturer, distributor, or responsible party can demonstrate both that the aerosol coating product is intended for shipment and use outside of California, and that the manufacturer, distributor, or responsible party has taken reasonable prudent precautions to assure that the aerosol coating product is not distributed to California. This subsection (c) does not apply to aerosol coating products that are sold, supplied, or offered for sale by any person to retail outlets in California.

(d) The requirement in section 94522(a) prohibiting the application of aerosol coating products containing volatile organic compounds in excess of the limits specified in the Table of Standards shall apply only to commercial application of aerosol coating products.

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

94524. Administrative Requirements

(a) **Most Restrictive Limit.**

Except as otherwise provided in section 94522(a)(2), if anywhere on the container of any aerosol coating product listed in the Table of Standards, or on any sticker or label affixed thereto, or in any sales or advertising literature, any representation is made that the product may be used as, or is suitable for use as a product for which a lower VOC standard is specified, then the lowest applicable VOC standard shall apply.

(b) **Labeling Requirements.**

(1) Both the manufacturer and responsible party for each aerosol coating product subject to this article shall ensure that all products subject to section 94522(a) clearly display the following information on each product container which is manufactured 90 days or later after the effective date of this article:

(A)(i) the applicable VOC standard for the product that is specified in section 94522(a), expressed as a percentage by weight unless the product is included in an alternative control plan approved by the Executive Officer, as provided in Article 4. Section 94540-94555, Title 17, California Code of Regulations, and the product exceeds the applicable VOC standard;

(ii) if the product is included in an alternative control plan approved by the Executive Officer, and the product exceeds the applicable VOC standard specified in section 94522(a), the product shall be labeled with the term "ACP" or "ACP product";

(B) the aerosol coating category as defined in section 94521, or an abbreviation of the coating category; and

(C) the day, month, and year on which the product was manufactured, or a code indicating such date.

(2) The information required in section 94524(b)(1), shall be displayed on the product container such that it is readily observable without removing or disassembling any portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(3) No person shall remove, alter, conceal, or deface the information required in

section 94524(b)(1) prior to final sale of the product.

(4) For any aerosol coating product subject to section 94522(a), if the manufacturer or responsible party uses a code indicating the date of manufacture or an abbreviation of the coating category as defined in section 94521, an explanation of the code or abbreviation must be filed with the Executive Officer prior to the use of the code or abbreviation.

(c) **Reporting Requirements**

(1) Any responsible party for an aerosol coating product subject to this article which is sold, supplied, or offered for sale in California, must supply the Executive Officer of the Air Resources Board with the following information within 90 days of the effective date of this article: the company name, mail address, contact person, and the telephone number of the contact person.

For responsible parties who do not manufacture their own aerosol coating products, the responsible party shall also supply the information specified in this subsection (c)(1) for those manufacturers which produce products for the responsible party.

The responsible party shall also notify the Executive Officer within 90 days of any change in the information supplied to the Executive Officer pursuant to this subsection (c)(1).

(2) Any manufacturer of an aerosol coating product subject to this article shall also submit the following to the Executive Officer:

(A) By January 1, 1998, the information required under section 94524(c)(3) for the 1997 calendar year, or the most recent 12 month period for which accurate data is available.

(B) By January 1, 1998, a written report of the research and development efforts undertaken to achieve the December 31, 1999 VOC limits. This report shall include the following information for the general coating categories in the Table of Standards, and, upon request by the Executive Officer, information for the specialty coating categories shall also be included:

(i) the raw materials and valve systems tested, including resin types, propellants, solvents, and paint solids;

(ii) the testing protocols used to test the products;

(iii) the results of the testing performed to evaluate the products and the conclusions reached from the results; and

(iv) a listing of all product formulations which meet the December 31, 1999 standards specified in section 94522(a), and the projected cost to manufacture them.

(3) Upon 90 days written notice, each manufacturer or responsible party subject to this article shall submit to the Executive Officer a written report with all of the following information for each product they manufacture under their name or another company's name:

(A) the brand name of the product;
(B) upon request, a copy of the product label;
(C) the owner of the trademark or brand names;
(D) the product category as defined in section 94521;
(E) the annual California sales in pounds per year and the method used to calculate California annual sales;
(F) the percent by weight VOC, water, solids, propellant, and any compounds exempt from the definition of VOC as specified in section 94521;
(G) an identification of each product brand name as a "household," "industrial," or "both" product; and
(H) any other information necessary to determine the emissions from aerosol coating products.

The information requested in this section (c)(3) may be supplied as an average for a group of aerosol coating products within the same coating category when the products do not vary in VOC content by more than two percent (by weight), and the coatings are based on the same resin type, or the products are color variations of the same product (even if the coatings vary by more than 2 percent in VOC content).

(4) Upon written request, the responsible party for aerosol coating products subject to this article shall supply the executive officer with a list of all exempt compounds contained in any aerosol coating product within 15 working days.

(5) All information submitted by manufacturers pursuant to section 94524 shall be handled in accordance with the procedures specified in Title 17, California Code of Regulations, sections 91000-91022.

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

94525. Variances

(a) Any person who cannot comply with the requirements set forth in Section 94522, 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 94522 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 94522 is necessary and will be permitted. A hearing shall be initiated no later than 75 working 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 94522 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 94522 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) 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) Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from the requirements of Section 94522 after holding a public hearing in accordance with the provisions of subsection 94525(b).

NOTE: Authority cited: Sections 39600, 39601, and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, 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) VOC Content. The VOC content of solvent-based aerosol coating products subject to the provisions of this article shall be determined by the procedures set forth in Bay Area Air Quality Management District Manual of Procedures, Volume III, Laboratory Procedures, Method 35, "Determination of Volatile Organic Compounds (VOC) in Solvent Based Aerosol Paints", as amended January 19, 1994. For water-containing aerosol coating products subject to the provisions of this article, the VOC content shall be determined by ASTM D-5325-92, "Standard Test Method for Determination of Weight Percent Volatile Content of Water-Borne Aerosol Paints", November 15, 1992.

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

(1) the content of 1,1-difluoroethane shall be determined by BAAQMD Method 35, "Determination of Volatile Organic Compounds (VOC) in Solvent Based Aerosol Paints", as amended January 19, 1994.

Other exempt compounds which are used as propellants in aerosol coatings may also be quantified using this method with prior written approval of the Executive Officer.

(2) the content of dichloromethane (methylene chloride) and 1,1,1-trichloroethane shall be determined by ARB Method 432, California Code of Regulations, Title 17, Section 94144, 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. Other exempt compounds (except for propellants) in aerosol coatings may also be quantified using this method with prior written approval of the Executive Officer; and

(3) 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 unsaturations; 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 Test Method 311 (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.

(d) Specular Gloss. Specular gloss of flat and nonflat coatings shall be determined by ASTM Method D-523-89, March 31, 1989.

(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, 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.

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

94527. Severability

Each part of this article shall be deemed severable, and in the event that any part of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

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

94528. Federal Enforceability

For purposes of federal enforceability of this article, the United States Environmental Protection Agency is not subject to approval determinations made by the Executive Officer under sections 94525 and 94526. Within 180 days of a request from a person who has been granted a variance under Section 94525, a 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.

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.

ALTERNATIVE CONTROL PLAN REGULATION FOR CONSUMER PRODUCTS AND AEROSOL COATING PRODUCTS

Amend Article 4. Alternative Control Plan, Sections 94540-94555, Title 17, California Code of Regulations, to read as follows:

SUBCHAPTER 8.5 CONSUMER PRODUCTS

Article 4. Alternative Control Plan

94540. Purpose

The purpose of this article is to provide an alternative method to comply with the VOC standards for consumer products and aerosol coating products that are specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Articles 2 and 3, sections 94507-94517 and 94520-94528. This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into ~~an~~ separate "alternative control plans" (ACPs) for consumer products and aerosol coating products, as specified in this article.

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

94541. Applicability

Only responsible ACP parties for consumer products or aerosol coating products may enter into an ACP. An ACP shall include only those consumer products or only those aerosol coating products which are subject to the VOC standards specified in sections 94509 or 94522, Title 17, California Code of Regulations. Consumer products and aerosol coating products shall not be included together in the same ACP.

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

94542. Definitions

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

(1) "ACP Emissions" means the sum of the VOC emissions from every ACP product subject to an Executive Order approving an ACP, during the compliance period specified in the Executive Order, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \cdots + (Emissions)_N$$

where,

$$Emissions = \frac{[VOC\ Content] \times [Enforceable\ Sales]}{100}$$

For all products except for charcoal lighter material products and aerosol coating products:

$$VOC\ Content = \frac{[(B - C) \times 100]}{A}$$

A = net weight of unit (excluding container and packaging)
B = total weight of all VOCs per unit, as defined in subsection (a)(31) of this section
C = total weight of all exempted VOCs per unit, as specified in section 94510

For charcoal lighter material products only:

$$VOC\ Content = \frac{[Certified\ Emissions \times 100]}{Certified\ Use\ Rate}$$

Certified Emissions = the emissions level for products approved by the Executive Officer under section 94509(h), as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound CH_2 per start.

Certified Use Rate = the usage level for products approved by the Executive Officer under section 94509(h), as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance

Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

For aerosol coating products only:

VOC Content = Percent VOC By Weight

"Percent VOC By Weight" shall have the same meaning as defined in section 94521(a)(46);

For all products:

Enforceable Sales = the total amount of an ACP product sold for use in California, during the applicable compliance period specified in the Executive Order approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding container and packaging).

1,2,...N = each product in an ACP up to the maximum N.

(2) "ACP Limit" means the maximum allowable ACP Emissions during the compliance period specified in an Executive Order approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \ldots + (Limit)_N$$

where,

$$Limit = \frac{[ACP\ Standard] \times [Enforceable\ Sales]}{100}$$

Enforceable Sales = the total amount of an ACP product sold for use in California, during the applicable compliance period specified in the Executive Order approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding container and packaging).

ACP Standard = either the ACP product's Pre-ACP VOC Content, or the applicable VOC standard specified in sections 94509 or 94522, whichever is the lesser of the two.

Pre-ACP
VOC Content = the lowest VOC content which the ACP product had between January 1, 1990 and the date on which the application for a proposed ACP is submitted to the Executive Officer, based on either the data on the product obtained from the March 12, 1991 Air Resources Board Consumer Products Survey, the data on the product obtained from the February 25, 1993 Air Resources Board Aerosol Paint Survey, or other accurate records available to the Executive Office, whichever yields the lowest VOC content for the product.

1,2,...N = each product in an ACP up to the maximum N.

(3) "ACP Product" means any "consumer product" or any "aerosol coating product" subject to the VOC standards specified in sections 94509 or 94522, except those products that have been exempted under sections 94510 or 94523, or exempted as Innovative Products under section 94511.

(4) "ACP Reformulation" or "ACP Reformulated" means the process of reducing the VOC Content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

(5) "ACP Standard" means either the ACP product's Pre-ACP VOC Content or the applicable VOC standard specified in sections 94509 or 94522, whichever is the lesser of the two.

(6) "Alternative Control Plan" or "ACP" means any emissions averaging program approved by the Executive Officer pursuant to the provisions of this article.

(7) "Compliance Period" means the period of time, not to exceed one year, for which the ACP Limit and ACP Emissions are calculated and for which compliance with the ACP Limit is determined, as specified in the Executive Order approving an ACP.

(8) "Contact Person" means a representative(s) that has been designated by the responsible ACP party for the purpose of reporting or maintaining any information specified in the Executive Order approving an ACP.

(9) "Date-Code" means the day, month and year on which the ACP product was manufactured, filled, or packaged, or a code indicating such a date.

(10) "Enforceable Sales" means the total amount of an ACP product sold for use in California, during the applicable compliance period specified in the Executive Order approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

(11) "Enforceable Sales Record" means a written, point-of-sale record or any other Executive Officer-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in California during the applicable compliance period can be accurately documented. For the purposes of this article, "enforceable sales records" include, but are not limited to, the following types of records:

(A) accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;

(B) accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify any data comprising such summaries is submitted by the responsible ACP party and approved by the Executive Officer;

(C) any other accurate product sales records approved by the Executive Officer as meeting the criteria specified in this subsection (a)(11).

(D) for pesticides only, accurate mill assessment records for economic poisons, verified by the California Department of Pesticide Regulations, which cover the sales of ACP pesticide products during the applicable compliance period.

(12) "Executive Order" means the document signed by the Executive Officer which includes the conditions and requirements of the ACP, and which allows manufacturers to sell ACP products in California pursuant to the requirements of this article.

(13) "Gross California Sales" means the estimated total California sales of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the Executive Officer will provide an accurate California sales estimate:

(A) apportionment of national or regional sales of the ACP product to California sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by California's current population; or

(B) any other documented method which provides an accurate estimate of the total current California sales of the ACP product.

(14) "LVP" or "LVP Compound" means a low vapor pressure VOC which:

(A) has a vapor pressure less than 0.1 mm Hg at 20 degrees Centigrade, or

(B) if the vapor pressure is unknown, has more than 12 carbon atoms.

(15) "LVP Content" means the total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

(16) "Missing Data Days" means the number of days in a compliance period for which the responsible ACP party has failed to provide the required Enforceable Sales or VOC Content data to the Executive Officer, as specified in the Executive Order approving an ACP.

(17) "One-product business" means a responsible ACP party which sells, supplies, offers for sale, or manufactures for use in California:

(A) only one distinct ~~consumer~~ ACP product, sold under one product brand name, which is subject to the requirements of sections 94509 or 94522, or

(B) only one distinct ACP product line subject to the requirements of sections 94509 or 94522, in which all the ACP products belong to the same product category(ies) and the VOC Contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC Contents over the entire product line.

(18) "Pre-ACP VOC Content" means the lowest VOC content of an ACP product between January 1, 1990 and the date on which the application for a proposed ACP is submitted to the Executive Officer, based on either the data on the product obtained from the March 12, 1991 Air Resources Board Consumer Products Survey, the data on the product obtained from the February 25, 1993 Air Resources Board Aerosol Paint Survey, or other accurate records available to the Executive Officer, whichever yields the lowest VOC content for the product.

(19) "Product Line" means a group of products of identical form and function belonging to the same product category(ies).

(20) "Reconcile" or "Reconciliation" means to provide sufficient VOC emission reductions to completely offset any shortfalls generated under the ACP during an applicable compliance period.

(21) "Reconciliation of Shortfalls Plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the Executive Officer pursuant to section 94543(a)(7)(J).

(22) "Responsible ACP Party" means the company, firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms, or establishments, the "responsible ACP party" is the party which the ACP product was "manufactured for" or "distributed by", as noted on the label.

(23) "Retail Outlet" means any establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

(24) "Shortfall" means the ACP Emissions minus the ACP Limit when the ACP Emissions were greater than the ACP Limit during a specified compliance period, expressed to the nearest pound of VOC. "Shortfall" does not include emissions occurring prior to the date that the Executive Order approving an ACP is signed by the Executive Officer.

(25) "Small Business" shall have the same meaning as defined in Government Code Section 11342(e).

(26) "Surplus Reduction" means the ACP Limit minus the ACP Emissions when the ACP Limit was greater than the ACP Emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in section 94547(c), "Surplus Reduction" does not include emissions occurring prior to the date that the Executive Order approving an ACP is signed by the Executive Officer.

(27) "Surplus Trading" means the buying, selling, or transfer of Surplus Reductions between responsible ACP parties.

(28) "Total Maximum Historical Emissions" (TMHE), means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC Content or Enforceable Sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP has failed to provide the required VOC Content or Enforceable Sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \cdots + (MHE)_N$$

$$MHE = \left[\frac{Highest\ VOC\ Content \times Highest\ Sales}{100 \times 365}\right] \times Missing\ Data\ Days$$

where,

Highest VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC Content data (for any portion of the compliance period), as specified in the Executive Order approving the ACP, or the current actual VOC Content, if the responsible ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the Executive Order.

Highest Sales = the maximum one-year Gross California Sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting Enforceable Sales records (for any portion of the compliance period), as specified in the Executive Order approving the ACP, or the current actual one-year Enforceable Sales for the product, if the responsible ACP party has provided all required Enforceable Sales records (for the entire compliance period), as specified in the Executive Order approving the ACP.

Missing Data Days = the number of days in a compliance period for which the responsible ACP party has failed to provide the required Enforceable Sales or VOC Content data as specified in the Executive Order approving an ACP.

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required Enforceable Sales or VOC Content data as specified in the Executive Order approving an ACP.

(29) "VOC Content" means the total weight of VOC in a product, expressed to the nearest 0.1 pounds of VOC per 100 pounds of product and calculated according to the following equation:

For all products except for charcoal lighter material products and aerosol coating products:

$$VOC\ Content = \frac{[(B - C)\ x\ 100]}{A}$$

A = net weight of unit (excluding container and packaging)
B = total weight of all VOCs per unit, as defined in section 94542(a)(31)
C = total weight of all exempted VOCs per unit, as specified in section 94510

For charcoal lighter material products only,

$$VOC\ Content = \frac{[Certified\ Emissions\ x\ 100]}{Certified\ Use\ Rate}$$

Certified Emissions = the emissions level for products approved by the Executive Officer under section 94509(h), as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001

pound CH_2 per start.

Certified Use Rate = the usage level for products approved by the Executive Officer under section 94509(h), as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

For aerosol coating products only:

VOC Content = Percent VOC By Weight

"Percent VOC By Weight" shall have the same meaning as defined in section 94521(a)(46).

(30) "VOC Standard" means the maximum allowable VOC content for an ACP product, determined as follows:

(A) the applicable VOC Standard specified in sections 94509 or 94522, for all ~~consumer~~ ACP products except for charcoal lighter material;

(B) for charcoal lighter material products only, the VOC Standard for the purposes of this article shall be calculated according to the following equation:

$$VOC\ Standard = \frac{[0.020\ pound\ CH_2\ per\ start\ x\ 100]}{Certified\ Use\ Rate}$$

where,

0.020 = the certification emissions level for the Executive Officer-approved product, as specified in section 94509(h).

Certified Use Rate = the usage level for products approved by the Executive Officer under section 94509(h), as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

(31) "Volatile Organic Compound" or "VOC" shall have the same meaning as defined in section 94508(a)(90).

(32) "Working Day" means any day between Monday through Friday, inclusive, except for days that are federal holidays.

(b) The definitions set forth in sections 94508 and 94521, Title 17, California Code of

Regulations, shall also apply to this article.

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

94543. Requirements and Process for Approval of an ACP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to the small business or one-product business upon approval of the ACP;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Executive Officer shall not approve an ACP submitted by a responsible ACP party if the Executive Officer determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products or the requirements for aerosol coating products (specified in sections 94507-94517 and sections 94520-94528, Title 17, California Code of Regulations), that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

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

94544. ACP Approval Timeframes

(a) The Executive Officer shall take appropriate action on an ACP within the following time periods:

(1) Within 30 working days of receipt of an ACP application, the Executive Officer shall inform the applicant in writing that either:

(A) the application is complete and accepted for filing, or

(B) the application is deficient, and identify the specific information required to make the application complete.

(2) Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the Executive Officer shall inform the applicant in writing that either:

(A) the additional information is sufficient to make the application complete, and the application is accepted for filing, or

(B) the application is deficient, and identify the specific information required to make the application complete.

(3) If the Executive Officer finds that an application meets the requirements of section 94543 of this article, then he or she shall issue an Executive Order in accordance with the requirements of this article. The Executive Officer shall act to approve or disapprove a complete application within 90 working days after the application is deemed complete.

(b) Before the end of each time period specified in this section, the Executive Officer and the responsible ACP party may mutually agree to a longer time period for the Executive Officer to take the appropriate action.

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.

94545. Recordkeeping and Availability of Requested Information

(a) All information specified in the Executive Order approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

(b) The records specified in subsection (a) of this section shall be made available to the Executive Officer or his or her authorized representative:

(1) immediately upon request, during an on-site visit to a responsible ACP party, or

(2) within five working days after receipt of a written request from the Executive Officer, or

(3) within a time period mutually agreed upon by both the Executive Office and the responsible ACP party.

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.

94546. Violations

(a) Any person who commits a violation of this article is subject to the penalties specified in Health and Safety Code, section 42400 et seq. Failure to meet any requirement of this article or any condition of an applicable Executive Order shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subsections (b) through (h) of this section.

(b) False reporting of any information contained in an ACP application, or any supporting documentation or amendments thereto, shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

(c) Any exceedance during the applicable compliance period of the VOC content specified for an ACP product in the Executive Order approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product which exceeds the specified VOC Content that is sold, supplied, offered for sale, or manufactured for use in California.

(d) Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

(1) Failure to report data (i.e., "missing data") or failure to report data accurately (i.e., "inaccurate data") in writing to the Executive Officer regarding the VOC content, LVP Content, Enforceable Sales, or any other information required by any deadline specified in the applicable Executive Order;

(2) False reporting of any information submitted to the Executive Officer for determining compliance with the ACP requirements;

(3) Failure to completely implement the reconciliation of shortfalls plan that is set forth in the Executive Order, within 30 working days from the date of written notification of a shortfall by the Executive Officer;

(4) Failure to completely reconcile the shortfall as specified in the Executive Order, within 90 working days from the date of written notification of a shortfall by the Executive Officer.

(e) False reporting or failure to report any of the information specified in section 94547(b)(9), or the sale or transfer of invalid Surplus Reductions, shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the Surplus Reductions are claimed to be valid.

(f) Except as provided in subsection (g) of this section, any exceedance of the ACP Limit for any compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The Executive Officer shall determine whether an exceedance of the ACP Limit has occurred as follows:

(1) If the responsible ACP party has provided all required information for the applicable compliance period specified in the Executive Order approving an ACP, then the Executive Officer shall determine whether an exceedance has occurred using the Enforceable Sales records and VOC Content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;

(2) If the responsible ACP party has failed to provide all the required information specified in the Executive Order for an applicable compliance period, the Executive Officer shall determine whether an exceedance of the ACP Limit has occurred as follows:

(A) for the missing data days, the Executive Officer shall calculate the total maximum historical emissions, as specified in section 94542(a)(28);

(B) for the remaining portion of the compliance period which are not missing data days, the Executive Officer shall calculate the emissions for each ACP product using the Enforceable Sales records and VOC Content that were reported for that portion of the applicable compliance period;

(C) the ACP Emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subsection (f)(2)(A), and the emissions determined pursuant to subsection (f)(2)(B);

(D) the Executive Officer shall calculate the ACP Limit for the entire compliance period using the ACP Standards applicable to each ACP product and the Enforceable Sales records specified in subsection (f)(2)(B). The Enforceable Sales for each ACP Product during missing data days, as specified in subsection (f)(2)(A), shall be zero (0);

(E) an exceedance of the ACP Limit has occurred when the ACP Emissions, determined pursuant to subsection (f)(2)(C), exceeds the ACP Limit, determined pursuant to subsection (f)(2)(D).

(g) If a violation specified in subsection (f) of this section occurs, the responsible ACP party may, pursuant to this paragraph, establish the number of violations as calculated according to the following equation:

$$NEV = (ACP\ Emissions - ACP\ Limit) \times \frac{1\ violation}{40\ pounds}$$

where,

NEV	=	number of ACP Limit violations
ACP Emissions	=	the ACP Emissions for the compliance period
ACP Limit	=	the ACP Limit for the compliance period

The responsible ACP party may determine the number of ACP Limit violations pursuant to this paragraph only if it has provided all required information for the applicable compliance period, as specified in the Executive Order approving the ACP. By choosing this option, the responsible ACP party waives any and all legal objections to the calculation of the ACP Limit violations pursuant to this subsection (g).

(h) In assessing the amount of penalties for any violation occurring pursuant to subsections (a) - (g) of this section, the circumstances identified in Health and Safety Code section 42403(b) shall be taken into consideration.

(i) A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date(s) when the records establishing a violation are received by the Executive Officer.

(j) The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

NOTE: Authority cited: Sections 39600, 39601, and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, 41712, 42400-42403, 42404.5, Health and Safety Code; and section 338(k), Code of Civil Procedure.

94547. Surplus Reductions and Surplus Trading

(a) The Executive Officer shall issue Executive Orders (Surplus Reduction Certificates) which establish and quantify, to the nearest pound of VOC reduced, any Surplus Reductions achieved by a responsible ACP party operating under an ACP. The Surplus Reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subsection (b) of this section. All Surplus Reductions shall be calculated by the Executive Officer at the end of each compliance period within the time specified in the approved ACP. Surplus Reduction Certificates shall not constitute instruments, securities, or any other form of property.

(b) The issuance, use, and trading of all Surplus Reductions shall be subject to the following provisions:

(1) For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in section 94509 or aerosol coating products subject to the VOC standards specified in section 94522 may not be used to generate Surplus Reductions;

(2) Surplus Reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP;

(3) Surplus Reductions are valid only after the Executive Officer has issued an Executive Order pursuant to subsection (a) of this section.

(4) Any Surplus Reductions issued by the Executive Officer may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is cancelled pursuant to section 94551;

(5) Surplus Reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated;

(6) Except as provided in subsection (b)(7)(B) of this section, only small or one-product businesses selling products under an approved ACP may purchase Surplus Reductions. An increase in the size of a small business or one-product business shall have no effect on Surplus Reductions purchased by that business prior to the date of the increase.

(7) While valid, Surplus Reductions can be used only for the following purposes:

(A) to adjust either the ACP Emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the Surplus Reductions are not to be used by any responsible ACP party to further lower its ACP Emissions when its ACP Emissions are equal to or less than the ACP Limit during the applicable compliance period; or

(B) to be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the Executive Officer pursuant to section 94543(a)(7)(J).

(8) A valid Surplus Reduction shall be in effect starting five (5) days after the date of issuance by the Executive Officer, for a continuous period equal to the number of days in the compliance period during which the Surplus Reduction was generated. The Surplus Reduction shall then expire at the end of its effective period.

(9) At least five (5) working days prior to the effective date of transfer of Surplus Reductions, both the responsible ACP party which is selling Surplus Reductions and the responsible ACP party which is buying the Surplus Reductions shall, either together or separately, notify the Executive Officer in writing of the transfer. The notification shall include all of the following:

(A) the date the transfer is to become effective;
(B) the date the Surplus Reductions being traded are due to expire;
(C) the amount (in pounds of VOCs) of Surplus Reductions that are being transferred;
(D) the total purchase price paid by the buyer for the Surplus Reductions;
(E) the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the Surplus Reductions;
(F) a copy of the Executive Officer-issued Surplus Reductions Certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the Surplus Reductions. The copy shall show the amount of any remaining non-traded Surplus Reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the Surplus Reductions fully understand the conditions and limitations placed upon the transfer of the Surplus Reductions and accept full responsibility for the appropriate use of such Surplus Reductions as provided in this section.

(10) Surplus Reduction Credits shall not be traded between an ACP for consumer products and an ACP for aerosol coating products.

(c) Limited-Use Surplus Reduction Credits for Early Reformulations of ACP Products

(1) For the purposes of this subsection (c), "early reformulation" means an ACP product which is reformulated to result in a reduction in the product's VOC Content, and which is sold, supplied, or offered for sale in California for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the Executive Officer. "Early reformulation" does not include any reformulated ACP products which are sold, supplied, or offered for sale in California more than one year prior to the date on which the ACP application is submitted to the Executive Officer.

(2) If requested in the application for a proposed ACP, the Executive Officer shall, upon approval of the ACP, issue Surplus Reduction Credits for early reformulation(s) of ACP product(s), provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the Executive Officer:

(A) accurate documentation showing that the early reformulation(s) reduced the VOC content of the ACP product(s) to a level which is below the Pre-ACP VOC content of the product(s), or below the applicable VOC standard(s) specified in sections 94509 or 94522, whichever is the lesser of the two;

(B) accurate documentation demonstrating that the early reformulated ACP product(s) was sold in California retail outlets within the time period specified in subsection (c)(1);

(C) accurate sales records for the early reformulated ACP product(s) which meet the definition of "Enforceable Sales Records" in section 94542(a)(11), and which demonstrate that the Enforceable Sales for the ACP product(s) are at least 75.0% of the Gross California Sales for the product(s), as specified in section 94543(a)(4);

(D) accurate documentation for the early reformulated ACP product(s) which meets the requirements specified in sections 94543 (a)(3)-(4), (a)(7)(G)-(H), and (a)(8), and which identifies the specific test methods for verifying the claimed early reformulation(s) and the statistical accuracy and precision of the test methods as specified in section 94543 (a)(7)(D).

(3) Surplus Reduction Credits issued pursuant to this subsection (c) shall be calculated separately for each early reformulated ACP product by the Executive Officer according to the following equation:

$$SR = Enforceable\ Sales \times \frac{([VOC\ Content]_{initial} - [VOC\ Content]_{final})}{100}$$

where,

SR = Surplus Reductions for the ACP product, expressed to the nearest pound

Enforceables Sales = the Enforceable Sales for the early reformulated ACP product, expressed to the nearest pound of ACP product ,

$VOC\ Content_{initial}$ = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in sections 94509 or 94522, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product,

$VOC\ Content_{final}$ = the VOC Content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

(4) The use of Surplus Reduction Credits issued pursuant to this subsection (c) shall be subject to all of the following provisions:

(A) Surplus Reduction Credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the Executive Order approving an ACP, and shall not be used for any other purpose;

(B) Surplus Reduction Credits shall not be transferred to, or used by, any other responsible ACP party;

(C) Surplus Reduction Credits shall not be traded between an ACP for consumer products and an ACP for aerosol coating products;

(~~C~~D) Except as provided in this subsection (c), Surplus Reduction Credits shall be subject to all requirements applicable to Surplus Reductions and Surplus Trading, as specified in subsections 94547(a) and (b)

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.

94548. Reconciliation of Shortfalls

(a) At the end of each compliance period, the responsible ACP party shall make an initial calculation of any shortfalls occurring in that compliance period, as specified in the Executive Order approving the ACP. Upon receipt of this information, the Executive Officer shall determine the amount of any shortfall that has occurred during the compliance period, and shall notify the responsible ACP party of this determination.

(b) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the Executive Order approving the ACP, within 30 working days from the date of written notification of a shortfall by the Executive Officer;

(c) All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Executive Officer, in accordance with the reconciliation of shortfalls plan specified in the Executive Order approving the ACP.

(d) All requirements specified in the Executive Order approving an ACP, including all applicable ACP Limits, shall remain in effect while any shortfalls are in the process of being reconciled.

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

94549. Notification of Modifications to an ACP by the Responsible ACP Party

(a) Modifications That Do Not Require Executive Officer Pre-Approval: The responsible ACP party shall notify the Executive Officer, in writing, of any change in an ACP product's: (1) product name, (2) product formulation, (3) product form, (4) product function, (5) applicable product category(ies), (6) VOC Content, (7) LVP Content, (8) date-codes, or (9) recommended product usage directions, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

(1) the nature of the modification;
(2) the extent to which the ACP product formulation, VOC Content, LVP Content, or recommended usage directions will be changed;
(3) the extent to which the ACP Emissions and ACP Limit specified in the Executive Order will be changed for the applicable compliance period; and
(4) the effective date and corresponding date-codes for the modification.

(b) Modifications That Require Executive Officer Pre-Approval: The responsible ACP party may propose modifications to the Enforceable Sales records or reconciliation of shortfalls plan specified in the Executive Order approving the ACP. Any such proposed modifications shall be fully described in writing and forwarded to the Executive Officer. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The Executive Officer shall act on the proposed modifications using the procedure set forth in section 94544. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as any proposed modification(s) is approved in writing by the Executive Officer.

(c) Other Modifications: Except as otherwise provided in subsections (a) and (b) of this section, the responsible ACP party shall notify the Executive Officer, in writing, of any information learned of by the responsible ACP party which may alter any of the information submitted pursuant to the requirements of section 94543. The responsible ACP party shall provide such notification to the Executive Officer no later than 15 working days from the date such information is known to the responsible ACP party.

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

94550. Modification of an ACP by the Executive Officer

(a) If the Executive Officer determines that: (1) the Enforceable Sales for an ACP product are no longer at least 75.0% of the Gross California Sales for that product, or (2) the information submitted pursuant to the approval process set forth in section 94543 is no longer valid, or (3) the ACP Emissions are exceeding the ACP Limit specified in the Executive Order approving an ACP, then the Executive Officer shall modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP Emissions will not exceed the ACP Limit. The Executive Officer shall not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing 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 ACP should be modified.

(b) If any applicable VOC standards specified in sections 94509 or 94522 are modified by the Air Resources Board in a future rulemaking, the Executive Officer shall modify the ACP Limit specified in the Executive Order approving an ACP to reflect the modified VOC standards as of their effective dates.

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

94551. Cancellation of an ACP

(a) An ACP shall remain in effect until:

(1) the ACP reaches the expiration date specified in the Executive Order;

(2) the ACP is modified by the responsible ACP party and approved by the Executive Officer, as provided in section 94549;

(3) the ACP is modified by the Executive Officer, as provided in section 94550;

(4) the ACP includes a product for which the VOC standard specified in sections 94509 or 94522 is modified by the Air Resources Board in a future rulemaking, and the responsible ACP party informs the Executive Officer in writing that the ACP will terminate on the effective date(s) of the modified standard;

(5) the ACP is cancelled pursuant to subsection (b) of this section.

(b) The Executive Officer shall cancel an ACP if any of the following circumstances occur:

(1) the responsible ACP party demonstrates to the satisfaction of the Executive Officer that the continuation of the ACP will result in an extraordinary economic hardship;

(2) the responsible ACP party violates the requirements of the approved ACP, and the violation(s) results in a shortfall that is 20.0% or more of the applicable ACP Limit (i.e., the ACP Emissions exceed the ACP Limit by 20.0% or more);

(3) the responsible ACP party fails to meet the requirements of section 94548 (Reconciliation of Shortfalls) within the time periods specified in section 94548.

(4) the responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

(c) The Executive Officer shall not cancel an ACP pursuant to subsection (b) of this section without first affording the responsible ACP party an opportunity for a public hearing 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 ACP should be cancelled.

(d) The responsible ACP party for an ACP which is cancelled pursuant to this section and who does not have a valid ACP to immediately replace the cancelled ACP shall meet all of the following requirements:

(1) all remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of section 94548, and

(2) all ~~consumer~~ ACP products subject to the ACP shall be in compliance with the applicable VOC standards in sections 94509 and 94522 immediately upon the effective date of ACP cancellation.

(e) Any violations incurred pursuant to section 94546 shall not be cancelled or in any way affected by the subsequent cancellation or modification of an ACP pursuant to section 94549, 94550 or 94551.

NOTE: Authority cited: Sections 39600, 39601, 41511 and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, 41511, 41712, 42400-42403, Health and Safety Code.

94552. Treatment of Information

The information required by sections 94543 (a)(1)-(a)(2) and 94547(b)(9) is public information which may not be claimed as confidential. All other information submitted to the Executive Officer to meet the requirements of this article 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.

94553. Other Applicable Requirements

(a) Unless otherwise specified in the Executive Order approving an ACP, all applicable requirements specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Articles 2 and 3, (~~commencing with~~ sections 94507-94517 and 94520-94528), shall remain in effect for all ~~consumer~~ ACP products subject to an ACP.

(b) All applicable requirements specified in Title 17, California Code of Regulations, Division 3, Chapter 1, Subchapter 8.5, Articles 2 and 3, (~~commencing with~~ sections 94507-94517 and 94520-94528), shall remain in effect for all ~~consumer~~ ACP products which are not subject to an ACP.

(c) The provisions of this article notwithstanding, the requirements of the South Coast Air Quality Management District Rule 1174 shall remain in effect for all charcoal lighter material products sold, supplied, offered for sale, or manufactured for use in the South Coast Air Quality Management District (as defined in section 40410 of the Health and Safety Code).

(d) The provisions of this article notwithstanding, the requirements of the Bay Area Air Quality Management District Rule 8-49 shall remain in effect for all aerosol coating products sold, supplied, offered for sale, applied, or manufactured for use in the Bay Area Air Quality Management District (as defined in section section 40200 of the Health and Safety Code).

(~~d~~e) A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

(1) The Executive Officer shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated Executive Order. The written notifications shall be postmarked at least five (5) working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(2) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the Executive Order approving the ACP and this article.

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.

94554. 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 this article. Within 180 days of a request from a responsible ACP party whose ACP has been approved by the Executive Officer, an ACP 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 ACP as a revision to the applicable implementation plan, the Executive Officer shall hold a public hearing on the proposed revision. 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 94543(b). The decision may approve, disapprove, or modify an ACP previously granted pursuant to section 94543.

NOTE: Authority cited: Sections 39600, 39601, 39602, and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, and 41712, Health and Safety Code.

94555. Federal Clean Air Act Requirements

(a) Unless otherwise determined by the U.S. Environmental Protection Agency, products sold, supplied, offered for sale, or manufactured for use in California under the requirements of an ACP are not subject to the requirements of Title V of the Federal Clean Air Act (42 U.S.C. sections 7661-7661f).

(b) Nothing in this article shall be construed to modify or in any way affect any requirements of the federal Clean Air Act, including but not limited to Title V of the federal Clean Air Act, which are applicable to the construction or operation of the responsible ACP party's manufacturing facility or to any other activities of the responsible ACP party.

NOTE: Authority cited: Sections 39600, 39601, 39602, and 41712, Health and Safety Code. Reference: Sections 39002, 39600, 40000, and 41712, Health and Safety Code.