# HAIRSPRAY CREDIT PROGRAM REGULATION

# HAIRSPRAY CREDIT PROGRAM REGULATION

## SUBCHAPTER 8.5 CONSUMER PRODUCTS

### Article 5. Hairspray Credit Program

### 94560. Purpose

The purpose of this article is to provide a voluntary program, the Hairspray Credit Program, that rewards and provides an incentive for early compliance, and over compliance, with the second-tier hairspray standard of 55 percent volatile organic compounds (VOC) which is effective June 1, 1999, as specified in section 94509(a), Title 17, California Code of Regulations. The goal of the program is to benefit both the environment and the regulated entities. This program allows responsible parties for hairspray products to voluntarily generate surplus VOC emission reductions which may be certified by the Executive Officer as Hairspray Emission Reduction Credits (HERCs). HERCs may be used as an alternative method to comply with certain requirements of the California regulations for consumer products (sections 94500-94555, Title 17, California Code of Regulations).

This article is intended to ensure that all HERCs represent verified emission reductions that are real, permanent, quantifiable, enforceable, and surplus.

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

### 94561. Applicability

(a) This article applies to the following:

(1) the calculation, certification, issuance, registration, transfer, use, retirement, and expiration of HERCs; and

(2) any person who applies for, is issued, holds, transfers, or uses HERCs.

(b) Only a responsible party for a hairspray product may submit an application to request HERCs. Applications to use HERCs may be submitted only by responsible ACP (Alternative Control Plan) parties and responsible parties for antiperspirant and deodorant, aerosol coating products, and other consumer products that are subject to the VOC standards in sections 94500-94555, Title 17, California Code of Regulations.

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

Reference: Sections 39002, 39600, 40000, and 41712, Health and Safety Code.

**94562. Definitions**

For the purposes of this article, the following definitions shall apply in addition to the definitions set forth in sections 94501, 94508, 94521, and 94542, Title 17, California Code of Regulations:

(a) "Air Quality Plan" includes, but is not limited to, attainment, rate-of-progress, and maintenance plans adopted by a California air pollution control or air quality management district (district) pursuant to State requirements specified in Chapter 10 (commencing with section 40910) of Part 3, Division 26 of the Health and Safety Code, and federal requirements specified in the Clean Air Act governing the State Implementation Plan.

(b) "Applicable Hairspray Product" means a hairspray product listed in an application to request HERCs submitted pursuant to section 94563(b)(2)(B).

(c) "Applicable Consumer Product" means an antiperspirant, deodorant, aerosol coating product, or other consumer product listed in an application to use HERCs submitted pursuant to section 94568(b)(2)(D).

(d) "Credit Generation Period" means the period of time, in days, during which an applicable hairspray product will be manufactured that will generate surplus VOC emission reductions. The dates on which a specified credit generation period will begin and end must be in one of the following: (1) for early compliance, which may include over compliance, with the second-tier hairspray standard, the time period between January 1, 1998, and May 31, 1999, or (2) for over compliance with the second-tier hairspray standard on and after its effective date of June 1, 1999, the time period between June 1, 1999, and January 1, 2005. The credit generation period may be divided into installment periods for issuance of HERCs.

(e) "Delayed Compliance Period" means the period of time, in days, during which a consumer product will be manufactured that does not comply with its applicable VOC limit in sections 94502, 94509, or 94522, Title 17, California Code of Regulations. The date on which a specified delayed compliance period will end must be on or prior to January 1, 2010.

(f) "Documented Sales" means the total amount of the following products, as applicable, sold for use in California:

(1) *For the Purpose of Credit Generation.* The applicable hairspray product that was manufactured during the credit generation period as specified in an

application submitted to the Executive Officer in accordance with section 94563, or

(2) *For the Purpose of Credit Use.* The applicable consumer product that was manufactured during the following time periods:

(A) the most recent twelve-month period (for which documented sales records are available) prior to the delayed compliance period as specified in the application submitted to the Executive Officer in accordance with section 94568, and

(B) the delayed compliance period as specified in the application submitted to the Executive Officer in accordance with section 94568.

"Documented Sales" shall be determined through documented sales records (expressed to the nearest pound, excluding product container and packaging).

(g) "Documented 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 a product manufactured during an applicable time period and sold for use in California can be accurately documented. For the purposes of this article, "documented sales record" may include, but is not limited to, the following types of records:

(1) accurate records of direct retail or other outlet sales;

(2) accurate compilations made by independent market surveying services, using methods consistent with widely-accepted practices of the business, scientific, or regulatory communities, of direct retail or other outlet sales, provided that a detailed method which can be used to verify any data comprising such summaries is submitted by the responsible party and approved by the Executive Officer;

(3) accurate manufacturing records in combination with any other data or information that permits determination of California sales; or

(4) for pesticides only, accurate mill assessment records for economic poisons, verified by the California Department of Pesticide Regulations, which cover the sales of the pesticide product.

(h) "Hairspray" means a consumer product designed primarily for the purpose of dispensing droplets of resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

(i) "Reformulated or Reformulation" means a change in the formulation of a hairspray product for the primary purpose of lowering the product's VOC content to 55 percent or less, as determined pursuant to section 94515, Title 17, California Code of Regulations.

(j) "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.

(k) "State Implementation Plan" means the California State Implementation Plan approved by the United States Environmental Protection Agency (U.S. EPA), in accordance with requirements of the Clean Air Act.

(l) "Stock Keeping Unit" means the classification used by consumer product manufacturers to identify products that have the same brand name, formulation, net weight, and other distinguishing characteristics.

(m)"Surplus" means VOC emission reductions not required by any hairspray standard in section 94509, Title 17, California Code of Regulations; Alternative Control Plan approved pursuant to section 94543, Title 17, California Code of Regulations; or air quality plan. For the purposes of this article only, surplus emission reductions shall include emission reductions resulting from compliance with the second-tier hairspray standard of 55 percent VOC between January 1, 1998, and June 1, 1999. Surplus VOC emission reductions shall not include emission reductions occurring prior to January 1, 1998.

(n) "VOC Content" shall have the same meaning in this article as it has in sections 94500-94555, Title 17, California Code of Regulations, as applicable.

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

**94563. Application Process to Request Hairspray Emission Reduction Credits**

(a) A responsible party for a hairspray product who is requesting HERCs for a specified credit generation period must submit a written, two-part application to the Executive Officer. Any information in the custody of the California Air Resources Board that has been submitted as confidential by a responsible party (or by a person acting on behalf of the responsible party) pursuant to this section shall be handled by the Air Resources Board in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Records), Title 17, California Code of Regulations, provided that such information is clearly identified as being confidential.

(b) *Application Requirements: Part One.* The first part of an application to request HERCs must be submitted in accordance with the following requirements:

(1) *Timing of Application Submittal.* For a hairspray product initially manufactured for sale in California on or after July 1, 1998, or a hairspray product reformulated after June 1, 1999, the first part of the application must be submitted before the start of the credit generation period, and no later than six months after the product's initial date of manufacture for sale in California. For all other hairspray products, the first part of the application must be submitted before the mid-point of the credit generation period;

(2) *Application Contents.* The first part of the application must include the following information:

(A) the responsible party's company name, street and mailing address, telephone number, and designated contact person for the application;

(B) a list of the hairspray products for which the responsible party is requesting HERCs (i.e., the applicable hairspray products);

(C) a list of all stock keeping units for each applicable hairspray product, including any product identification numbers used by the responsible party to identify the stock keeping units;

(D) the credit generation period (in days) for which the responsible party is requesting HERCs for the applicable hairspray product, including the dates on which the credit generation period will begin and end (If the responsible party is requesting HERCs to be issued in more than one installment, the application must include the number of installments and the ending date of each installment period.);

(E) product labels for each stock keeping unit for each applicable hairspray product;

(F) speciated formulation data for the applicable hairspray product, and for the product prior to its reformulation, if applicable, (aggregated data may be submitted for the different stock keeping units) including percent by weight values to the nearest 0.1 percent for the following:

1. VOC content (for aggregated data, the applicant shall submit the highest VOC content or a sales-weighted average VOC content) and

2. each compound present in the formulation, except compounds that

amount to a combined concentration of one percent by weight;

(G) the approximate date on which sales in California began (or will begin) for each applicable hairspray product;

(H) the list of contact persons, telephone numbers, and street and mailing addresses of all persons and businesses who will provide information that will be used to determine documented sales for the applicable hairspray products;

(I) a demonstration, which will be subject to Executive Officer approval, of the validity of the methodology that will be used to calculate documented sales, based on the documented sales records, that will be provided pursuant to section 94563(c)(2)(A);

(J) for a hairspray product initially manufactured for sale in California on or after July 1, 1998, or a hairspray product reformulated after June 1, 1999, a statement that the hairspray product is formulated for the primary purpose of generating emission reductions for credits;

(K) for a credit generation period greater than 365 days, a proposed schedule for the annual submittal of test results required pursuant to section 94563(c)(2)(B); and

(L) a signed declaration as specified in section 94563(e).

(c) *Application Requirements: Part Two.* The second part of an application to request HERCs must be submitted in accordance with the following requirements:

(1) *Timing of Application Submittal.* The second part of the application must be submitted after the conclusion of the credit generation period, and any installment period, if applicable.

(2) *Application Contents.* The second part of the application must include the following information for each applicable hairspray product:

(A) documented sales for the installment period or credit generation period, as applicable, and supporting documentation that shows how sales were calculated using documented sales records and a methodology previously approved by the Executive Officer;

(B) test results, using a method(s) specified in section 94515, Title 17, California Code of Regulations, that verify the VOC content information

provided for the applicable hairspray product in the first part of the application; the units that were tested must come from three different batches that were manufactured during the credit generation period (If the credit generation period is greater than 365 days, such verification shall be performed at least annually and the test results submitted to the Executive Officer);

(C) the responsible party's own calculation of the quantity of HERCs for each applicable hairspray product for the credit generation period, or installment period, if applicable, calculated by using the protocol specified in section 94564; and

(D) a signed declaration as specified in section 94563(e).

(d) *Applicable Time Periods and Procedures for Review and Approval of Application.* The following time periods and procedures shall apply to the Executive Officer's review of Parts One and Two of the application:

(1) *Application Completeness Determination.* Within 30 days after receiving either a Part One or Part Two application submittal, the Executive Officer shall inform the applicant in writing that the submittal is complete, or that it is deficient and shall identify the specific information required to make the submittal complete.

(2) *Application Completeness Determination After Receiving Additional Information.* Within 15 days after receiving additional information submitted in response to a determination by the Executive Officer that Part One or Part Two of the application is deficient, the Executive Officer shall inform the applicant in writing, either that the new information is sufficient to make the application complete, or that the application is deficient and shall identify the specific information required to make it complete.

(3) *Approval Determination for Part One of Application.* Within 45 days after determining that Part One of the application is complete, the Executive Officer shall inform the applicant in writing whether the information provided in Part One is approved for the purposes of calculating HERCs in accordance with the protocol specified in section 94564. The Executive Officer's determination, through an Executive Order, shall include, but not be limited to the following:

(A) whether the VOC content for each applicable hairspray product is verified by the speciated formulation data submitted pursuant to section 94563(b)(2)(F), and

(B) whether the applicant's proposed methodology for calculating documented sales is approved.

(4) *Approval Determination for Part Two of Application.* Within 90 days of determining that Part Two of the application (or the information required by this part of the application for installment issuance of HERCs) is complete, the Executive Officer shall determine whether to issue and certify the HERCs in accordance with section 94565.

(5) *Extension of Time Periods.* For any of the time periods specified in this subsection (d), the Executive Officer and the applicant may agree to a longer time period for the Executive Officer to make a decision.

(e) Declaration by Responsible Party. Parts One and Two of the application, and any additional information submitted, must include a declaration, signed by a legal representative of the responsible party, that the submittal contains true, accurate, and complete information based on information and belief formed after reasonable inquiry. Any person submitting information directly (i.e., the information is not reviewed by or submitted through the responsible party) to the Executive Officer on behalf of the responsible party must also make such a declaration.

(f) *Specified VOC Limit for a Hairspray Product in the Hairspray Credit Program.* No applicable hairspray product manufactured during a credit generation period shall exceed the VOC content for the product specified in the Executive Order approving the application to request HERCs and issuing the HERCs.

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

**94564. Protocol for Calculating Hairspray Emission Reduction Credits**

(a) The following equation shall be used to calculate the quantity of HERCs generated for either early compliance or over compliance for an applicable hairspray product manufactured during a specified credit generation period (or installment period, if applicable) expressed to the nearest pound of surplus VOC emission reductions:

$$\text{HERCs} =$$

$$(\text{Documented Sales}_{HCP})([\text{VOC Content}]_{Baseline} - [\text{VOC Content}]_{Hairspray})/100$$

where,

"Documented Sales $_{HCP}$ " means the documented sales, in pounds, of the

applicable hairspray product manufactured during the credit generation period (or installment period, if applicable) as specified in the application pursuant to section 94563(c)(2)(A).

"$[\text{VOC Content}]_{\text{Baseline}}$" means the following:

For an applicable hairspray product initially offered for sale in California after January 1, 1993, the lower of the following:

(1) if the applicable hairspray product is a reformulated product, the VOC content, in percent, of the product before it was reformulated, as reported in the application and verified by the speciated formulation data required pursuant to section 94563(b)(2)(F), or

(2) 80 percent for a credit generation period between January 1, 1998, and May 31, 1999, and 55 percent for a credit generation period between June 1, 1999, and January 1, 2005.

For an applicable hairspray product initially offered for sale in California between October 11, 1990, and January 1, 1993: 80 percent for a credit generation period between January 1, 1998, and May 31, 1999, and 55 percent for a credit generation period between June 1, 1999, and January 1, 2005.

For an applicable hairspray product initially offered for sale in California before October 11, 1990, that has not been reformulated after October 11, 1990, the condition in section 94564(b)(5) shall apply.

"$[\text{VOC Content}]_{\text{Hairspray}}$" means the VOC content, in percent, of the applicable hairspray product as reported in the application and verified by the speciated formulation data required pursuant to section 94563(b)(2)(F).

(b) For the purposes of the calculation protocol specified in section 94564(a), the following conditions shall apply:

(1) HERCs shall only be calculated if the Executive Officer has approved the methodology used to calculate documented sales in accordance with section 94563(d)(3)(B).

(2) HERCs shall only be calculated if the "$[\text{VOC Content}]_{\text{Hairspray}}$" reported in the application is verified by speciated formulation data and test results required pursuant to sections 94563(b)(2)(F) and 94563(c)(2)(B). If the test results do not verify the reported "$[\text{VOC Content}]_{\text{Hairspray}}$," the Executive Officer and the responsible party may agree to an alternative "$[\text{VOC Content}]_{\text{Hairspray}}$" provided

it is supported by testing or demonstrations specified in section 94515, Title 17, California Code of Regulations.

(3) HERCs shall equal zero for any credit generation period after June 1, 1999, unless either of the following circumstances applies:

(A) the applicable hairspray product has generated surplus emission reductions prior to June 1, 1999, and the surplus emission reductions have been, or will be, certified by the Executive Officer as HERCs, or

(B) the applicable hairspray product was initially manufactured for sale in California, or reformulated, after June 1, 1999, in which case paragraph (4) of this subsection (b) shall apply.

(4) For an applicable hairspray product initially manufactured for sale in California on or after July 1, 1998, or reformulated after June 1, 1999, HERCs shall be zero unless all of the following circumstances have occurred:

(A) Pursuant to section 94563(b)(1), the responsible party has submitted to the Executive Officer an application to request HERCs before the start of the credit generation period, and no later than six months after the applicable hairspray product's initial date of manufacture for sale in California.

(B) Pursuant to section 94563(b)(2)(J), the responsible party has provided a statement that the hairspray product is formulated for the primary purpose of generating emission reductions for credits.

(C) For a reformulated hairspray product, the "$[\text{VOC Content}]_{\text{Baseline}}$" for the calculation of HERCs shall equal the product's lowest VOC content prior to its reformulation.

(5) For an applicable hairspray product initially offered for sale in California before October 11, 1990, that has not been reformulated after October 11, 1990, HERCs shall be zero.

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

**94565. Issuance of Hairspray Emission Reduction Credits**

(a) After evaluating an application to request HERCs in accordance with the requirements specified in section 94563, the Executive Officer shall determine whether HERCs should be issued to the responsible party. In addition, the

Executive Officer shall issue and certify the HERCs only if the Executive Officer is satisfied that the application provides sufficient and verifiable information to assure that surplus emission reductions have been generated. The Executive Officer shall issue HERCs by means of an Executive Order that certifies the HERCs as follows:

(1) Each HERC has been calculated in accordance with the protocol specified in section 94564 and is otherwise in compliance with this article and any applicable federal requirements.

(2) Each HERC is for surplus emission reductions.

(3) Each HERC is expressed as a pound of surplus VOC emission reductions.

(4) Each HERC has been assigned an expiration date that is five years after the issuance date of the Executive Order or a January 1, 2005, expiration date, whichever is later, after which the ability to use the HERC ceases.

(b) On Januarry 1, 2010, all outstanding HERCs shall expire, and may no longer be used.

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

**94566. HERC Account Registry**

(a) The Executive Officer shall maintain a HERC Registry listing all HERCs held in HERC Accounts by each person. Each HERC Account will list information on the holder, quantities, credit generation periods and expiration dates of HERCs. The HERC Registry shall constitute the official and controlling record of all HERC holdings. HERCs shall not constitute instruments, securities, or any other form of property. Information contained in the HERC Registry shall be available to the public upon request, except that HERC Account information in the custody of the California Air Resources Board, and claimed as confidential by the responsible party, shall be handled by the Air Resources Board in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Records), Title 17, California Code of Regulations.

(b) The Executive Officer shall modify the account information in the HERC Registry upon any of the following actions:

(1) the issuance of HERCs in accordance with section 94565;

(2) the transfer of HERCs to an existing or a newly created HERC Account in

accordance with sections 94566(c) and 94566(d);

(3) the use of HERCs in accordance with sections 94567, 94570, and 94571;

(4) a credit or debit to a HERC Account to correct for differences between "Projected Excess Emissions" and "Actual Excess Emissions", including any additional amount of HERCs required pursuant to section 94567(h), in accordance with section 94571(c);

(5) a change of name, ownership, or other pertinent information for a HERC Account holder;

(6) a HERC Account holder's written request that HERCs be retired for an environmental benefit pursuant to section 94567(d); or

(7) the expiration of HERCs as required by sections 94565(a)(4) or 94565(b).

(c) Any person may acquire HERCs through purchase, trade or other means of transfer from any HERC Account holder. The transfer of HERCs shall be effective only upon amendment of the HERC Registry by the Executive Officer.

(d) Any person who requests a transfer of HERCs must provide the following information in writing to the Executive Officer:

(1) the contact persons, names of the companies, street and mailing addresses, and telephone numbers of the parties involved in the transfer (For some transfers, the provider and recipient may be the same.);

(2) information on the HERCs to be transferred, including quantities, credit generation periods, and expiration dates;

(3) the date the transfer is proposed to become effective; and

(4) a statement, signed by both the provider and the recipient, that both parties fully understand the conditions and limitations of the HERCs being transferred and accept full responsibility for the appropriate use of the HERCs as provided 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.

**94567. Allowable Uses of Hairspray Emission Reduction Credits**

Except as provided in subsections (f), (g), and (h) of this section, HERCs may be

used as follows upon approval by the Executive Officer:

(a) A responsible party for a consumer product regulated by the Air Resources Board pursuant to sections 94500-94528, Title 17, California Code of Regulations who is also a HERC Account holder may use HERCs to obtain additional time (i.e., a delayed compliance period) for a product to comply with an applicable VOC standard set forth in sections 94502, 94509 or 94522, Title 17, California Code of Regulations, provided the product has been manufactured for sale in California for at least 12 months before the submittal of an application in accordance with section 94568. During a delayed compliance period, the responsible party must comply with the following:

(1) the specified VOC content for the product reported in the HERC use application, and approved by the Executive Officer, instead of the applicable VOC standard specified in sections 94502, 94509, or 94522, Title 17, California Code of Regulations, and

(2) except as provided in paragraph (1) of this subsection (a), with all other applicable requirements specified in sections 94500-94528, Title 17, California Code of Regulations.

(b) In accordance with section 94514(h), Title 17, California Code of Regulations, a responsible party for a hairspray product who is also a HERC Account holder may use HERCs to mitigate excess emissions that result from the granting of a variance.

(c) In accordance with sections 94543(a)(7)(J) and 94548, Title 17, California Code of Regulations, a "responsible ACP party" who is also a HERC Account holder may use HERCs to reconcile any shortfalls occurring in a compliance period for an Alternative Control Plan.

(d) Any person who is a HERC Account holder may retire HERCs to provide an environmental benefit.

(e) For purposes of this article, high volatility organic compounds (HVOCs) and medium volatility organic compounds (MVOCs) in antiperspirants and deodorants shall be treated the same as other VOCs for HERC use.

(f) The use of HERCs shall not result in any greater emissions of toxic air contaminants, as defined per Health and Safety Code section 39657(b), than would otherwise have occurred if HERCs were not used.

(g) All outstanding HERCs shall expire on January 1, 2010, after which HERCs may no longer be used.

(h) On or before December 31, 2002, the Executive Officer shall determine whether the Hairspray Credit Program has demonstrated an environmental benefit. For the purposes of this article, the Hairspray Credit Program has demonstrated an environmental benefit if, during the time period from the start of the program until December 31, 2002, the total amount of HERCs generated under the program is five percent greater than the total amount of HERCs used. If the Executive Officer determines that the Hairspray Credit Program has not demonstrated an environmental benefit by December 31, 2002, then all HERCs will be discounted by an amount of five percent upon use.

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

**94568. Application Process for Use of Hairspray Emission Reduction Credits**

(a) Any HERC Account holder who wishes to use HERCs as specified in sections 94567(a), 94567(b), or 94567(c) must submit a written application to the Executive Officer. Any information in the custody of the California Air Resources Board that has been submitted as confidential by a responsible party (or a person acting on behalf of the responsible party) pursuant to this section shall be handled by the Air Resources Board in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Records), Title 17, California Code of Regulations, provided that such information is clearly identified as being confidential.

(b) *Application Requirements for HERC Use Pursuant to Section 94567(a).* An application to use HERCs for a delayed compliance period pursuant to section 94567(a) must be submitted in accordance with the following requirements:

(1) *Timing of Application Submittal.* An application must be submitted and approved by the Executive Officer before the start of the proposed delayed compliance period.

(2) *Application Contents.* The application must contain all of the following information:

(A) the responsible party's company name, street and mailing address, telephone number, and designated contact person for the application;

(B) information on the HERCs to be used, including HERC Account Holder, quantities, credit generation periods, and expiration dates;

(C) the amount of excess emissions the HERCs will be used to offset

(i.e., "Projected Excess Emissions" calculated using the protocol specified in section 94569);

(D) the list of the consumer products (i.e., applicable consumer products) for which the responsible party is requesting additional time to comply with the VOC standard identified in paragraph (E) of this subsection;

(E) the VOC standard specified in sections 94502, 94509, or 94522, Title 17, California Code of Regulations, for which the responsible party is requesting additional time to comply;

(F) the list of stock keeping units for each applicable consumer product, including any product identification numbers used by the responsible party to identify the stock keeping units;

(G) product labels for each stock keeping unit for each applicable consumer product;

(H) the responsible party's most recent speciated formulation data for each applicable consumer product (aggregated data may be submitted for the different stock keeping units) including percent by weight values to the nearest 0.1 percent for the following:

1. VOC content (for aggregated data, the applicant shall submit the highest VOC content or a sales-weighted average VOC content) and

2. each compound present in the formulation, except compounds that amount to a combined concentration of one percent by weight or less;

(I) documented sales for each applicable consumer product for the most recent twelve-month period (for which documented sales records are available) prior to the delayed compliance period, and supporting documentation that shows how sales were calculated using the documented sales records and a methodology which will be subject to Executive Officer approval pursuant to section 94568(b)(2)(K) and section 94570(a)(2);

(J) the list of contact persons, telephone numbers, and street and mailing addresses of all persons and businesses who have provided, or will provide, information for the determination of documented sales for all the applicable consumer products;

(K)a demonstration to the satisfaction of the Executive Officer of the validity of the methodology(ies) used, or to be used, to calculate documented

sales pursuant to sections 94568(b)(2)(I), 94569, and 94571(b), based on the documented sales records provided by the responsible party or the contact persons listed in paragraph (J) of this subsection (b)(2);

(L) test results, using a method(s) specified in sections 94506, 94515 or 94526, Title 17, California Code of Regulations, as applicable, that verify the VOC content information for the applicable consumer product as specified in paragraph (H) of this subsection (b)(2); the units that were tested must have come from three different batches that were manufactured less than one calendar year before the beginning of the proposed delayed compliance period;

(M) the proposed delayed compliance period, in days, requested by the responsible party, including the dates on which the delayed compliance period would begin and end;

(N) for a proposed delayed compliance period greater than 365 days, a proposed schedule for annual submittal of information on "Documented $\text{Sales}_{\text{Delayed Compliance Period}}$" and "Actual Excess Emissions" as defined in section 94569 and required pursuant to section 94571(b); and

(O) a signed declaration as specified in section 94568(e).

(c) *Application Requirements for HERC Use Pursuant to Sections 94567(b) or 94567(c).* For HERC use as specified in sections 94567(b) or 94567(c), an application must be submitted in accordance with the following requirements:

(1) *Timing of Application Submittal.* The application must be submitted to and approved by the Executive Officer prior to the use of HERCs as specified in sections 94567(b) or 94567(c).

(2) *Application Contents.* The application must contain all of the following information:

(A) the responsible party's company name, street and mailing address, telephone number, and designated contact person for the application;

(B) information on the HERCs to be used, including HERC Account Holder, quantities, credit generation periods, and expiration dates;

(C) the amount of excess emissions the HERCs will be used to offset; and

(D) a signed declaration as specified in section 94568(e).

(d) *Applicable Time Periods and Procedures for Review of HERC Use Applications.* The following time periods and procedures shall apply to the Executive Officer's review of a HERC use application:

(1) *Application Completeness Determination.* Within 30 days after receiving an application, the Executive Officer shall inform the applicant in writing that the application is complete, or that the application is deficient and shall identify the specific information required to make the application complete.

(2) *Application Completeness Determination After Receiving Additional Information.* Within 15 days after receiving additional information provided in response to a determination by the Executive Officer that an application is deficient, the Executive Officer shall inform the applicant in writing, either that the new information is sufficient to make the application complete, or that the application is deficient and shall identify the specific information required to make the application complete.

(3) *Approval Determination for Application.* Within 90 days after determining that the HERC use application is complete, the Executive Officer shall determine whether to approve the use of HERCs.

(4) *Extension of Time Periods.* For any of the time periods specified in this subsection (d), the Executive Officer and the applicant may agree to a longer time period for the Executive Officer to make a decision.

(e) *Declaration by Responsible Party.* The application, and any additional information submitted, must include a declaration, signed by a legal representative of the responsible party, that the submittal contains true, accurate, and complete information based on information and belief formed after reasonable inquiry. Any person submitting information directly (i.e., the information is not reviewed or submitted through the responsible party) to the Executive Officer on behalf of the responsible party must also make such a declaration.

(f) *Specified VOC Limit for a Consumer Product in the Hairspray Credit Program.* No applicable consumer product manufactured during a delayed compliance period shall exceed the VOC content for that product specified in the Executive Order approving the application to use HERCs.

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

## 94569. Protocol for Calculation of Excess Emissions During a Delayed Compliance Period

The following equations shall be used to determine the amount of excess emissions from an applicable consumer product manufactured during a delayed compliance period (or a portion of a period, if applicable):

$$\text{Projected Excess Emissions} =$$

$$([\text{VOC Content}]_{\text{Product}} - [\text{VOC Standard}]_{\text{Product}})(\text{Projected Sales})$$

$$\text{Actual Excess Emissions} =$$

$$([\text{VOC Content}]_{\text{Product}} - [\text{VOC Standard}]_{\text{Product}})(\text{Documented Sales}_{\text{Delayed Compliance Period}})$$

where,

"Projected Excess Emissions" and "Actual Excess Emissions" shall be expressed to the nearest pound of VOC (if the product is an antiperspirant or deodorant, the nearest pound of HVOC or MVOC, as applicable).

"Projected Sales" shall be determined with the following equation:

$$\text{Projected Sales} =$$

$$(\text{Delayed Compliance Period}/365)(\text{Documented Sales}_{\text{Previous Year}})$$

where,

"Delayed Compliance Period" shall be expressed in days.

"Documented $\text{Sales}_{\text{Previous Year}}$" means the documented sales, in pounds, (determined using methodology approved by the Executive Officer) for the applicable consumer product for the most recent twelve-month period (for which documented sales records are available) prior to the delayed compliance period, as reported in the HERC use application submitted in accordance with section 94568.

"$[\text{VOC Content}]_{\text{Product}}$" means the VOC content, in percent, of the applicable consumer product as reported in the HERC use application. (If the product is an antiperspirant or deodorant, the VOC Content shall be expressed as HVOC or MVOC, as applicable.)

"$[\text{VOC Standard}]_{\text{Product}}$" means the VOC standard, in percent, for the consumer

product category as set forth by sections 94502, 94509 or 94522, Title 17, California Code of Regulations.

"Documented $Sales_{Delayed\ Compliance\ Period}$" means the documented sales, in pounds, (determined using methodology approved by the Executive Officer) for the applicable consumer product manufactured during the delayed compliance period, or a portion of the delayed compliance period, if applicable, as reported pursuant to section 94571(b).

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

**94570. Approval of Application for Use of Hairspray Emission Reduction Credits**

The Executive Officer shall, by means of Executive Order, approve the use of HERCs only after making the following determinations:

(a) For HERC use as specified in section 94567(a), the Executive Officer shall determine the following:

(1) "Projected Excess Emissions" have been calculated in accordance with the protocol specified in section 94569;

(2) the methodology(ies) used pursuant to sections 94568(b)(2)(I), 94569, and 94571(b) is appropriate for determining accurate documented sales information;

(3) the VOC content specified for the applicable consumer product, as reported in the application, has been verified by speciated formulation data submitted pursuant to section 94568(b)(2)(H) and test results in accordance with sections 94506, 94515 or 94526, Title 17, California Code of Regulations, as applicable; and

(4) the use of HERCs is consistent with the State Implementation Plan and federal requirements;

(b) For HERC use specified in sections 94567(a), 94567(b), and 94567(c), the Executive Officer shall determine that the responsible party's HERC account contains a sufficient quantity of HERCs to offset the projected excess emissions (which may consist of VOC, HVOC, or MVOC), to mitigate excess emissions that result from the granting of a variance, or to reconcile any shortfall occurring in a compliance period for an Alternative Control Plan, as applicable. The Executive Officer shall also

determine if the responsible party's HERC account contains a sufficient quantity of HERCs to provide the additional amount of HERCs required pursuant to section 94567(h), if applicable.

(c) For HERC use specified in sections 94567(a), 94567(b), and 94567(c), the Executive Officer shall determine that the use of HERCs will not result in any greater emissions of toxic air contaminants, as defined per Health and Safety Code section 39657(b), than would otherwise have occurred if HERCs were not used.

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

**94571. Modification and Reconciliation of Account Balance for HERC Use**

(a) *Modification of Account Balance After Approval of HERC Use.* When an application for HERC use is approved, the Executive Officer shall modify the applicant's HERC account to remove the amount of HERCs necessary to offset the excess emissions, as specified in the application (e.g., for use pursuant to section 94567(a), "Projected Excess Emissions" calculated pursuant to section 94569) and, if applicable, to provide the additional amount of HERCs required pursuant to section 94567(h).

(b) *Requirement to Submit Information on Documented Sales and Actual Excess Emissions.* For HERC use pursuant to section 94567(a) only, the responsible party (i.e, the applicant for HERC use or the HERC Account holder) must submit to the Executive Officer, within 120 days after the conclusion of the delayed compliance period, documented sales for the delayed compliance period and "Actual Excess Emissions" calculated in accordance with section 94569. For a delayed compliance period of more than 365 days, information on documented sales and actual excess emissions must be submitted annually in accordance with the time schedule specified in the Executive Order approving the application to use HERCs.

(c) *Correction of Account Balance.* The Executive Officer shall debit or credit the HERC Account accordingly to correct for any difference between the "Projected Excess Emissions" and the "Actual Excess Emissions" during the delayed compliance period (or portion of the period, if applicable), including any additional amount of HERCs required pursuant to section 94567(h), based on the documented sales information submitted in accordance with section 94571(b).

(d) *Reconciliation of Negative Balance.* If correction of the HERC Account

pursuant to section 94571(c) results in an overall negative balance in the HERC Account, the responsible party must completely reconcile the negative balance within 180 days of the conclusion of the delayed compliance period (or portion of the period, if applicable) or within the time period specified in the Executive Order.

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

**94572. Recordkeeping and Availability of Requested Information**

(a) All information specified in the Executive Order approving an application to request HERCs or an application to use HERCs must be maintained by the responsible party for a minimum of five years after the approval date of the Executive Order, or the date such records are generated, whichever is later.

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

(1) immediately upon request, during an on-site visit to the responsible party for a product participating in the Hairspray Credit Program,

(2) within 7 days after receipt of a written request from the Executive Officer, or

(3) within a time period agreed upon by both the Executive Officer and the responsible 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.

**94573. Violations**

(a) *Violations in General.* 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), (c), (d), (e) and (f) of this section.

(b) *Exceedances of Specified VOC Content.* Any exceedance during the applicable compliance period of the VOC content specified for a hairspray product or other consumer product in the Executive Order approving (1) Part Two of an application to request HERCs pursuant to section 94563 or (2) an application to use HERCs pursuant to section 94568 shall constitute a single, separate violation of the requirements of this article for each product unit manufactured during the applicable compliance period for sale in California which exceeds the specified VOC content.

(c) *False Reporting of Information.*

(1) False reporting of any information contained in an application to request HERCs pursuant to section 94563, or in any supporting documentation or amendments to an application, shall constitute a single, separate violation of the requirements of this article for each day of the credit generation period for the HERCs.

(2) False reporting of any information contained in an application to use HERCs pursuant to section 94568, or in any supporting documentation or amendments to an application, shall constitute a single, separate violation of the requirements of this article for each day during the time period in which the HERCs are to be used.

(3) False reporting of any information submitted to satisfy the requirements of section 94571(b) for documented sales information during a delayed compliance period shall constitute a single, separate violation of the requirements of this article for each day of the delayed compliance period.

(d) *Failure to Meet Applicable Deadlines.* 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 submit accurate documented sales for a delayed compliance period (or a portion of the period, if applicable) within 120 days after conclusion of this period, as specified in section 94571(b), or within the time schedule specified in the Executive Order approving the application to use HERCs.

(2) Failure to completely reconcile a negative balance for a HERC account within 180 days after the conclusion of the applicable delayed compliance period (or portion of the period, if applicable)

as specified in section 94571(d), or within the time schedule specified in the Executive Order approving the application to use HERCs.

(e) *Negative Balances in HERC Accounts at End of Delayed Compliance Period.* Except as provided in subsection (f) of this section, any overall negative balance that occurs in a HERC Account after the Executive Officer has made the correction specified in section 94571(c) for the difference between "Projected Excess Emissions" and "Actual Excess Emissions" at the end of a delayed compliance period (or portion of the period, if applicable) shall constitute a single, separate violation of the requirements of this article for each day of the delayed compliance period, or portion of the period.

(f) *Number of Violations Resulting from Negative Balances.* If a violation specified in subsection (e) of this section occurs, the responsible party may, pursuant to this subsection (f), establish a number of violations less than that set forth in subsection (e) as calculated according to the following equation:

$$\text{Number of Violations} = \text{Days}_{\text{Delayed}} - \text{Days}_{\text{Covered}}$$

where,

"$\text{Days}_{\text{Delayed}}$" means the number of days in the delayed compliance period (or portion of the period, if applicable)

"$\text{Days}_{\text{Covered}}$" means the number of days in the delayed compliance period (or portion of the period, if applicable) for which there are sufficient HERCs to offset excess emissions as calculated using the following equation:

$$\text{Days}_{\text{Covered}} =$$

$$(\text{HERCs}_{\text{Provided}} + \text{HERCs}_{\text{Correction}})(\text{Days}_{\text{Delayed}}/\text{Actual Excess Emissions})$$

where,

"$\text{HERCs}_{\text{Provided}}$" means the amount of HERCs, expressed as pounds, removed from the applicant's HERC Account upon approval of a HERC use application pursuant to section 94571(a);

"$\text{HERCs}_{\text{Correction}}$" means the amount of HERCs, expressed as pounds, removed from the applicant's HERC Account to correct for a difference in "Projected Excess Emissions" and "Actual Excess Emissions" pursuant to

section 94571(c); and

"Actual Excess Emissions" means the amount of excess emissions, expressed as pounds, from a consumer product manufactured during a delayed compliance period (or portion of the period, if applicable) as calculated pursuant to section 94569 and reported by the responsible party pursuant to section 94571(b).

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

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

(h) *Statute of Limitations.* Any limitation of time applicable to actions brought pursuant to this article shall be deemed to accrue on the date(s) when the records establishing a violation are received by the Executive Officer.

(i) *Liability of Responsible Parties and HERC Account Holders.* A responsible party or HERC Account holder is fully liable for compliance with the requirements of this article, even if the responsible party or HERC account holder 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, and 42404.5, Health and Safety Code; and section 338(k), Code of Civil Procedure

**94574. Federal Enforceability**

For purposes of federal enforceability of this article, the United States Environmental Protection Agency (U.S. EPA) is not subject to approval determinations made by the Executive Officer under this article. Within 180 days of a request from a responsible party who has received approval of an application to use HERCs, a HERC use approval meeting the requirements of the Clean Air Act shall be submitted by the Executive Officer to the U.S. EPA for inclusion in the applicable implementation plan approved or promulgated by the

U.S. EPA pursuant to section 110 of the Clean Air Act, 42 U.S.C., section 7410. Prior to submitting a HERC use approval as a revision to the applicable implementation plan, the Executive Officer shall hold a public hearing on the 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 U.S. EPA, every person who requests such notice, and 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. The decision may approve, disapprove, or modify a HERC use approval previously granted pursuant to section 94568.

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

**94575. Program Evaluation**

On an ongoing basis the Executive Officer shall evaluate the implementation of the Hairspray Credit Program, and track program results in terms of both actual emission reductions, and, to the extent practicable, cost savings relative to traditional regulatory programs. This program evaluation shall include an annual analysis of credit generation and use activities, and a description of any significant problems in the implementation of the program.

At least once every three years, the Executive Officer shall provide to the United States Environmental Protection Agency (U.S. EPA) a report on the program evaluation, including a comparison of credit generation and use activities for the previous three years, an assessment of the benefit to the environment which has resulted from the program, and a description of any significant problems that have occurred.

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