



Call/EPA

California
Environmental
Protection
Agency



Air Resources Board

P.O. Box 2815
2020 L Street
Sacramento, CA
95812-2815

June 26, 1997



Pete Wilson
Governor

James M. Strock
Secretary for
Environmental
Protection

Dear Sir or Madam:

This notice is to inform you of a conference call to discuss the enclosed draft of the Hairspray Credit Program regulation. This regulation has been redrafted in response to comments received at the June 5, 1997, workshop and subsequent comments from interested parties and the U.S. Environmental Protection Agency. The conference call will be held as follows:

Date: July 10, 1997
Time: 10:00 a.m. to 11:30 a.m. Pacific Daylight Time
Call in #: (800) 403 - 2019
Code#: (Obtain from ARB)

We have enclosed an agenda for the conference call. We have also enclosed a draft paper outlining our preferred option for adjusting the Hairspray Emission Reduction Credits (HERCs) to account for the compliance margin inherent in the test method for hairspray volatile organic compounds. We have made a number of changes to the draft to increase flexibility in the use of HERCs. To assist you in understanding the changes we have enclosed a summary of the changes.

We strongly encourage your participation in development of the draft regulation and want to ensure your ideas and concerns are addressed. The November 1997 Board Hearing date for this item makes our deadlines very short. For your information, this notice and the enclosed materials are also available on our website at <http://www.arb.ca.gov/consprod/consprod.htm>.

If you have any questions about the meeting or the enclosed materials, please contact Ms. Beverly Werner, Manager, Regulatory Assistance Section, at (916) 322-3984. We look forward to talking with you on July 10, 1997. To assist us in planning for a sufficient number of access lines, please contact Ms. Werner if you plan to participate in the call.

Sincerely,

(Original signed by)

Raymond E. Menebroker, Chief
Project Assessment Branch

Enclosures

Sir or Madam
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cc: Ms. Beverly Werner
Manager, Regulatory Assistance Section
Stationary Source Division

**AGENDA
CONFERENCE CALL ON THE
DRAFT HAIR SPRAY CREDIT REGULATION**

**July 10, 1997
10:00 a.m. to 11:30 a.m. Pacific Daylight Time**

**Call-in Number (800) 403-2019
Participant Code (Obtain from ARB)**

10:00	Welcome and Introductions
10:05	Additions or deletions from the agenda
10:10	Overview of changes made to draft HERC regulation since 6/5/97
10:45	Discussion of the compliance margin options
11:00	Open Discussion and Comments
11:25	Next Steps
11:30	Adjourn

AIR RESOURCES BOARD - Stationary Source Division
June 26, 1997

SUMMARY OF REVISIONS TO THE DRAFT
HAIRSPRAY CREDIT REGULATION DATED 6/5/97

Timing for Issuance of Hairspray Emission Reduction Credits

To make hairspray emission reduction credits (HERCs) available for use in delaying compliance with consumer products standards effective on 1/1/99, we changed the one-year generation period to allow the applicant to choose a more flexible period of any number of days up to 365. This makes HERCs available at an earlier date.

Credit Life

We changed the length of credit life from expiration in year 2005. Instead, HERCs will now expire five years after issuance or 2005, whichever is later. This will allow HERCs to be generated as late as 2005 and used up until 2010.

Application Process

Although requested to have a single application, we retained Part 1 and Part 2 of the application process to streamline the process for credit issuance. More work is done up-front to facilitate credit issuance at the end of the generation period. This will not impede timing for creation of credits. ARB will certify credits only upon receipt of full documentation verifying the credit has been generated.

To provide the manufacturer the assurance it would need to start generating credits, the ARB will make a preliminary decision in Part 1 of the application that the sales protocol and VOC content formulation data are acceptable. Part 2 of the application is simply quantification of sales and verification of VOC content through test results; then HERCs are issued.

We moved the calculation of the quantity of HERCs to Part 2 of the application.

We added an administrative process to ensure timely processing of applications.

Testing

Testing is no longer used in Part 1 of the application to establish the reformulated VOC content. Instead VOC content will be established by means of speciated formulation data, submitted by the manufacturers for each reformulated product for which an HERC will be generated.

The requirement for manufacturers to submit test results to ARB for reformulated products has been moved to Part 2 of the application so that testing does not delay processing of Part 1 of the

application. The tests will be used to verify VOC contents reported in Part 1 of the application. Additionally, ARB will reserve the option to perform random spot testing for verification of VOC content of reformulated products.

We added a requirement for testing to verify VOC content of products for which credits are being used.

California Sales

We used the Alternative Control Plan (ACP) approach to establish California sales.

ARB would approve methodologies for determining “approximate gross” and “documented” California sales.

Documented sales shall account for 75 percent or more of the corresponding gross California sales. Otherwise, credits cannot be generated.

Use of HERCs

We removed references to use of HERCs in other state trading programs.

Changed formula for use to come out in the form of pounds of HERCs needed rather than the number of additional days HERCs needed. This matches better with generation of HERCs on a pounds basis.

Reconciliation and Actual Sales Reporting

ARB authorizes use of HERCs based on projected sales of the above-the-standard product. However, within 120 days of the end of the noncompliance period the manufacturer must supply updated actual sales data. Based on the updated sales data, the manufacturer’s HERC account will be adjusted accordingly. If there is a negative balance, the manufacturer is required to reconcile the shortfall within one year.

Protocol for Generation of HERC

We reorganized formulas for clarity.

VOC content baseline for Tier 1 HERCs now defined as 80 percent VOC instead of lowest of either actual VOC content before reformulation or the 80 percent standard.

Reformulation has to have occurred after January 1, 1993 for products to qualify for creation of HERCs.

Title

We changed the program name from Early Reduction Hairspray Credit Program to Hairspray Credit Program.

Definitions

We referenced definitions of other consumer product regulations.

The “surplus” definition was changed to make it specific to the hairspray standard in State Implementation Plan.

We will keep the definitions of “Stockkeeping Unit” and “Reformulated Product” the same unless CTFA or others provide further recommendations.

We added definitions of “Responsible Party” and “VOC Content.”

Compliance Margin

We have not yet added any language to the draft regulation to address correction for the compliance margin; however, a suggested option will be discussed with the committee on July 10, 1997.

Violations

We added a section outlining conditions which would constitute violations of the HERC regulation.

**REVISIONS TO DRAFT REGULATORY LANGUAGE FOR
HAIRSPRAY CREDIT PROGRAM: OPTIONS FOR CONSIDERATION OF
"COMPLIANCE MARGINS" WHEN CALCULATING AND USING HERCS**

I. Should "compliance margins" be taken into account when credits are generated?

The June 5, 1997, draft regulatory language for the Hairspray Credit Program (HCP) proposes that hairspray emission reduction credits (HERCs) that are claimed by an applicant would be calculated using the following equations given in section 94564:

$$\text{Tier 1 HERC}_{\text{year } i} = (\text{Baseline VOC} - 55\% \text{ Standard}) / 100\% \times (\text{California Sales}_{\text{year } i})$$

$$\text{Tier 2 HERC}_{\text{year } i} = (55\% \text{ Standard} - \text{Reformulated VOC}) / 100\% \times (\text{California Sales}_{\text{year } i})$$

Staff is proposing changes in these equations, primarily in terminology used, to clarify what information is needed to calculate HERCs and to promote consistency, where possible, with terminology found in the Alternative Control Plan (ACP) regulatory language. The following equations reflect the proposed changes and will be the basis for the discussion here:

$$\text{Tier 1 HERCs} = \text{Documented Sales}_{\text{HCP}} \times \frac{[\text{VOC Content}]_{\text{Baseline}} - 55\%}{100\%}$$

$$\text{Tier 2 HERCs} = \text{Documented Sales}_{\text{HCP}} \times \frac{55\% - [\text{VOC Content}]_{\text{Reformulated}}}{100\%}$$

("Documented Sales_{HCP}" has similar meaning to the term "Enforceable Sales" in the ACP regulation, except it is determined for the "credit generation period," not the "compliance period.")

The protocol for calculating HERCs needs to ensure that all the credits are surplus emissions reductions. Information submitted on volatile organic compound (VOC) content and "documented sales" by the responsible party, ideally, should be verifiable by an independent party. An additional consideration is the expected variation in the accuracy, "the compliance margin," of the test method (3% for ARB Method 310) used to determine VOC content of the hairspray products. We need to evaluate the impact of these concerns on the calculation of credits and whether, or not, the protocol needs to address these concerns.

Staff agrees with industry comments that uncertainty associated with "documented sales" is best addressed on a case-by-case basis by the responsible party in the application; as

with the ACP's "enforceable sales," the protocol for determining "documented sales" must be approved by the Executive Officer.

Staff considered several options for dealing with the uncertainty associated with "VOC content." After considering the positive and negative aspects of these options, staff arrived at a "Preferred Option" that also allows the responsible party to submit an alternative method for calculating HERCs. Additionally, staff proposes to include in the protocol a requirement that results from ARB audits or verifications during the application period would supersede information submitted by the responsible party, unless the responsible party can provide a satisfactory explanation for the apparent discrepancies.

Preferred Option:

For each product, the responsible party will submit information on the VOC content, pre- and post- reformulation, of the product. To assure that the credits are not based on uncertainties in measurement, the VOC content would be adjusted by a "compliance margin" prior to calculating the HERCs. The "compliance margin" will be added to the submitted VOC content for the reformulated product. In Example A, below, only "Tier 1 HERCs" are being calculated," so the "55%" constant (the standard) would be replaced by 55 percent plus the compliance margin (*55% plus 3% for ARB Method 310 equals 58%*). Example B, below represents calculations for a product that is reformulated to over comply with the standard before June 1, 1999. Where "Tier 2 HERCs" will be calculated in addition to "Tier 1 HERCs," the adjustment would occur in the "Tier 2 HERCs" calculation only. (Reformulations after June 1, 1999, would only qualify for "Tier 2 HERCs.")

Example A: reformulated product from 80 percent VOC to early compliance with 55 percent standard before June 1, 1999, (*with inclusion of three percent compliance margin for ARB test method 310*) and "Documented Sales" ÷ 100% represented by " α ."

$$\begin{aligned} \text{Tier 1 HERCs} &= (80 - 58)\alpha = 22\alpha \quad (\text{adjustment included}) \\ \text{Total HERCs Issued} &= 22\alpha \end{aligned}$$

Example B: reformulated product from 80 percent VOC to 40 percent VOC before June 1, 1999, (*with inclusion of three percent compliance margin for ARB test method 310*) and "Documented Sales" ÷ 100% represented by " α ."

$$\begin{aligned} \text{Tier 1 HERCs} &= (80 - 55)\alpha = 25\alpha \quad (\text{no adjustment}) \\ \text{Tier 2 HERCs} &= (55 - 43)\alpha = 12\alpha \quad (\text{adjustment included}) \\ \text{Total HERCs Issued} &= 37\alpha \end{aligned}$$

However, if the responsible party can demonstrate to the Executive Officer that the method it used to determine VOC content of the reformulated product already accounts for "uncertainty," the Executive Officer may approve, on a case-by-case basis, the use of the responsible party's alternative method for the calculation of HERCs.

Other Options Considered

Staff also considered several other options, including 1) adjusting the VOC content of both the reformulated and original product by the "compliance margin," 2) making no "compliance margin" adjustment, and 3) requiring that the VOC content of the reformulated product be established solely by testing. Staff discarded these options because of several reasons, including 1) not satisfying federal criteria for emission credits, 2) increased complexity of the HERC calculation, and 3) decrease flexibility for the responsible party.

II. Should "compliance margins" be taken into account when credits are used.

We recommend that no adjustment be made for the "compliance margin" when HERCs are used. An adjustment was made during calculation of the credit. For the VOC content of the "delayed complying" product, it is a well-established and acceptable practice of compliance audits to allow for the "margin" of the test method (i.e., if the tested product's VOC content is within the margin, the product is considered to be meeting the applicable standard.). However, due to the "margin" allowed by the test method, staff believe that it is necessary for the responsible party to demonstrate that the submitted VOC content for the product is consistent with, and verified, by *the speciated* formulation data that is required to be submitted with the application pursuant to the draft regulation.

****Revised Draft for Discussion Purposes Only****

**~~EARLY REDUCTION HAIRSPRAY CREDIT PROGRAM (HCP)(ERCP)~~
FOR HAIRSPRAYS**

*(Note: The purpose of this document is to present the ARB staff's concepts for the Hairspray Credit Program. This revised draft incorporates oral comments received on June 5, 1997, at the second discussion meeting on the implementation of amendments to the Consumer Products Regulations pertaining to hairspray, and followup written comments received as of June 19, 1997. Modifications to the original draft language are shown in **bold underline**. The text to be removed is shown in ~~strikeout~~. The text shown in italics denotes placeholders for concepts that still need to be developed after more discussion with stakeholders.)*

Revised Draft Regulatory Language

Adopt new Article 5, ~~Early Reduction Credits Program for Hairsprays~~ **Hairspray Credit Program**, sections 94560-94568, Title 17, California Code of Regulations, to read as follows:

Article 5. ~~Early Reduction Credit Program for Hairsprays~~ Hairspray Credit Program

94560. Purpose.

The purpose of this article is to provide a voluntary program that rewards and provides an incentive for early compliance **and over compliance** with the June 1, 1999, 55 percent volatile organic compound (VOC) standard for hairsprays as specified in section 94509(a), Title 17, California Code of Regulations. This voluntary program would allow responsible parties to apply for and be issued Hairspray Emission Reduction Credits (HERCs) that are certified by the Executive Officer. **Registered HERC holders may, upon the approval of the Executive Officer, transfer HERCS to other parties, or use HERCs to delay compliance with VOC standards for existing consumer products.** This article is intended to ensure that any HERCs certified by the Executive Officer represent verified emission reductions that are real, permanent, quantifiable, enforceable, and surplus to those emission reductions which are needed to comply with existing state requirements **in the consumer product element of** ~~and with the State Implementation Plan.~~

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94561. Applicability.

This article shall apply to:

- (a) the calculation, certification, issuance, **registration**, transfer, use, retirement and expiration of HERCs;
- (b) any person who applies for, is issued, holds, transfers or uses HERCs;
- ~~(c) any person who uses HERCs transferred into an Alternative Control Plan pursuant to sections 94540-94555, Title 17, California Code of Regulations, and;~~
- ~~(d) any person who holds or uses HERCs transferred into any other state credit program that allows for the use of statewide emission reduction credits.~~

94562. Definitions.

For the purposes of this article, **all terms shall retain** ~~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 **unless otherwise defined herein**:

- (a) "Air Quality Plan," includes, but is not limited to, attainment, rate-of-progress, and maintenance plans adopted by a California Air Quality Management or Air Pollution Control District (District) pursuant to state requirements specified in Chapter 10 (commencing with section 40910) of Part 3 of the Health & Safety Code (the California Clean Air Act), and federal requirements specified in the Clean Air Act governing the State Implementation Plan.
- ~~(b) "Area Source" means any emitting activity occurring from a non-mobile source which is not subject to District of state permitting or registration requirements.~~
- ~~(b) (c) "Credit Generation **Period-Year**," means the **period of time, not to exceed 365 days**, calendar year in which a reformulated product results in surplus VOC emission reductions **are generated from the reformulation of a hairspray product** .~~
- ~~(d) "Credit Program," means a state rule or regulation that allows for the transfer and use of interchangeable emission reduction credits.~~

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(c) "Documented Sales," means the total amount of product sold for use in California during one of the following periods of time, as applicable:

- (1) the credit generation period specified in the application submitted to the Executive Officer in accordance with section 94563; or**
- (2) the most recent twelve-month period prior to the delayed compliance period for which documented sales records are available, in accordance with section 94567(c); or**
- (3) the delayed compliance period specified in the application submitted to the Executive Officer in accordance with section 94567(c)**

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

(d) "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 sold to the end user in California during the credit generation period, twelve-month period prior to the delayed compliance period, or delayed compliance period, whichever is applicable, can be accurately documented. For the purposes of this article, "documented sales record" includes, but is not limited to, the following types of records:

- (A) accurate records of direct retail or other outlet sales to the end user;**
- (B) accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to end users, 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;**
- (C) any other accurate product sales records approved by the Executive Officer as meeting the criteria specified in this subsection (e); and**

- (D) 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 .
- (e) "Gross California Sales" means the estimated total California sales (expressed to the nearest pound) of a given product during one of the time periods specified in subsections (c)(1) through (c)(3), as applicable, based on either of the following methods, whichever the responsible party demonstrates to the satisfaction of the Executive Officer will provide an accurate California sales estimate:
- (1) apportionment of national or regional sales of the product to California sales, determined by multiplying the average national or regional sales of the product by the fraction of national or regional population, respectively, that is represented by California current population; or
- (2) any other documented method which provides an accurate estimate of the total current California sales of the product.
- ~~(e) "Interchangeable Emission Reduction Credit," means an emission reduction credit generated from a stationary, mobile or area source that can be used, traded or banked among credit programs and/or source categories as specified in proposed Sections 91500 through 91508 of Subchapter 5.5, Chapter 1, Division 3, Title 17, California Code of Regulations, and in accordance with state and federal law.~~
- (f) "Reformulated Product," means one or more hairspray stock keeping units, all of which (1) comply with the 55 percent hairspray standard set forth in Section 94509(a), Title 17, California Code of Regulations, and (2) are formulated to vary in total VOC content, and for each individual chemical ingredient, no more than two percent by weight from each other.
- (g) 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.

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- (h g) "State Implementation Plan," means the California state implementation plan submitted by the Air Resources Board to the United States Environmental Protection Agency (U.S. EPA) ~~on November 15, 1994~~, in accordance with requirements in the Clean Air Act of 1990, and subsequent revisions.
- (i h) "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.
- (j i) "Surplus," means the VOC emission reductions not required by any hairspray standard in section 94509, alternative control plan approved pursuant to section 94543, air quality plan, local, state, or federal permit, rule, regulation, law or ordinance, or the State Implementation Plan. Surplus emissions reductions do not include VOC emissions reductions occurring prior to January 1, 1998.
- (j) ~~"Surplus Reduction," means the same as is defined in section 94542(a)(26), Title 17, California Code of Regulations.~~
- (k) "VOC Content" means the percent by weight (exclusive of container or packaging) of total volatile organic compounds (or high volatility organic compound or medium volatility compounds, if applicable) minus any exempt organic compounds, as applicable. "VOC Content" shall be determined pursuant to sections 94506, 94515 or 94526, Title 17, California Code of Regulations, as applicable.

94563. Application Process.

Any hairspray responsible party requesting HERCs for a particular credit generation ~~period shall year~~ must submit a written, two-part application to the Executive Officer. Each part of the application ~~shall should~~ be certified by the responsible party's signature to contain accurate information to the best of the responsible party's knowledge. Any information submitted as confidential by a responsible party pursuant to this section shall be handled in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Records), Title 17, California Code of Regulations.

- (a) Part One. The first part of the application shall be submitted in the first half of the credit generation period and shall ~~must~~ include the following information:

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- (1) the responsible party's company name, the mailing address, telephone number, and designated contact person for the application;
- (2) a list of the reformulated products for which the responsible party is requesting HERCs (**i.e. applicable reformulated products**);
- (3) a list of all stock keeping units for each **applicable** reformulated product listed under subsection (a)(2) **, including any product identification numbers used by the responsible party to identify the stock keeping units**;
- (4) the credit generation **period (not to exceed 365 days)** year for which the responsible party requests HERCs for the **applicable** reformulated products, **including the dates on which the credit generation period begins and ends** listed under subsection (a)(2) ~~(this year must be the same as the calendar year in which the first part of the application is submitted)~~;
- (5) product labels for each **applicable** stock keeping unit ~~listed under subsection (a)(3)~~;
- (6) speciated formulation data for each **applicable** reformulated product ~~listed per subsection (a)(2)~~ for the credit generation **period** year ~~listed per subsection (a)(4)~~ including percent by weight values **to the nearest 0.1 percent** for:
 - (A) ~~total~~ VOC content (averaged data may be submitted for the different stock keeping units), and
 - (B) each compound present in the formulation, except compounds that amount to a combined concentration of one percent by weight or less (averaged data may be submitted for the different stock keeping units);
- ~~(7) the formulation data specified in subsections (a)(6) for each product listed per subsection (a)(2) for the year before it was reformulated to meet the 55-percent VOC standard on the date specified under subsection (a)(9);~~

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- ~~(8) test results using a test method(s) specified in section 94515(a), Title 17, California Code of Regulations that verify the percent by weight total VOC contents for at least three retail samples representing different stock keeping units listed in subsection (a)(3) for each reformulated product listed per subsection (a)(2) for the credit generation period year listed in subsection (a)(4); (the three samples shall represent the widest variety of stock keeping units as possible);~~
- ~~(7 9) the approximate date sales in California sales began for each applicable reformulated product listed per subsection (a)(2);~~
- ~~(10) the responsible party's own calculation of the quantity of HERCs for each reformulated product listed per subsection (a)(2) for the credit generation period year listed per subsection (a)(4), calculated by using the protocol specified in section 94564.~~
- (8) the list of contact persons, phone numbers, names, street and mailing addresses of all persons and businesses who will provide information that will be used to determine documented sales for the applicable reformulated products; and**
- (9) a demonstration, to the satisfaction of the Executive Officer, of the validity of the methodologies that will be used to calculate documented sales and gross California sales based on the documented sales records that will be provided by the responsible party or the contact persons listed in subsection (a)(8).**
- (b) Part Two. The second part of the application shall may be submitted no later than one calendar year at a later date after the conclusion of the credit generation period year, . The second part of the application must include the following information for each applicable reformulated product:**
 - (1) documented sales for the applicable credit generation period and supporting documentation that shows how sales were calculated using documented sales records and a methodology approved by the Executive Officer ; responsible party's official documentation of the pounds of product sold by the responsible party for use in California for each reformulated product listed per subsection (a)(2) for the credit generation year listed per subsection (a)(4);:**

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- (2) calculation of the percentage of the gross California sales which is comprised of documented sales;**
- (3) test results using a test method(s) specified in section 94515(a), Title 17, California Code of Regulations that verify the VOC content information provided in the first part of the application for each of three different production samples that were manufactured during the credit generation period (when possible, the three samples shall be different stock keeping units with different formulations that represent the applicable reformulated product); and**
- (4) the responsible party's own calculation of the quantity of HERCs for each applicable reformulated product for the applicable credit generation period, calculated by using the protocol specified in section 94564.**

(The regulation will also need to include a protocol for the specific options available to a responsible party for calculating California sales such as those included in the Alternative Control Plan Regulation as the definitions for "Enforceable Sales Record" and "Gross California Sales" (sections 94542(a)(11) and(13), Title 17, California Code of Regulations. This protocol will also need to address how to count the portions of annual sales that occur after the reformulation date specified under subsection (a)(9) for Tier 1 HERCs and Tier 2 HERCs, and before the implementation of the 55 percent standard on June 1, 1999, for Tier 1 HERCs.)

- (c) The following conditions shall govern the administrative process for reviewing an application:**
 - (1) Within 30 days of receipt of either part of the application, the Executive Officer shall inform the applicant in writing that the applicable part of the application is complete, or that the application is deficient and shall identify the specific information required to make the applicable part of the application complete.**
 - (2) Within 15 days of receipt of 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**

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make the application complete, or that the application is deficient and shall identify the specific information required to make the applicable part of the application complete.

(3) Within 45 days of determining that first part of the application is complete, the Executive Officer shall inform the applicant in writing whether the Executive Officer decides that the information provided in the first part of the application is valid for the purposes of calculating HERCs in accordance with the protocol specified in section 94564. The applicant and the Executive Officer may mutually agree to a longer time period for the Executive Officer to make a decision. The Executive Officer's decision shall include, but not be limited to:

(A) whether the VOC content for each applicable product is consistent with the associated speciated formulation data, and

(B) whether to approve the applicant's proposed methodology for calculating documented sales and gross California sales.

94564. Protocol for Calculation of Hairspray Emission Reduction Credits.

(a) The following equations shall be used to calculate the quantity of HERCs that occurred in a specific credit generation period year for a specific reformulated product, denominated in units of pounds of VOC emission reductions ~~for each reformulated product listed in section 94563(a)(2) for the credit generation~~ period year listed in section 94563(a)(4):

$$\text{Tier 1 HERCs}_{\text{year } i} = \frac{\text{Baseline VOC} - 55\% \text{ Standard}}{100\%} \times \text{California Sales}_{\text{year } i}$$

$$\text{Tier 2 HERCs}_{\text{year } i} = \frac{55\% \text{ Standard} - \text{Reformulated VOC}}{100\%} \times \text{California Sales}_{\text{year } i}$$

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$$\text{Tier 1 HERCs} = \frac{\text{Documented Sales}_{\text{HCP}} \times \left(\frac{[\text{VOC Content}]_{\text{Baseline}} - 55\%}{100\%} \right)}{100\%}$$

$$\text{Tier 2 HERCs} = \frac{\text{Documented Sales}_{\text{HCP}} \times \left(\frac{55\% - [\text{VOC Content}]_{\text{Reformulated}}}{100\%} \right)}{100\%}$$

where:

- (1) "Tier 1 HERCs_{year i}," **mean** represent HERCs for year i for **surplus** emission reductions resulting from reformulations to the 55 percent VOC hairspray standard that occur between January 1, 1998, and June 1, 1999;
- (2) "Tier 2 HERCs_{year i}," **mean** represent HERCs for year i for **surplus** emission reductions resulting from reformulations below the 55 percent VOC hairspray standard that occur **between** after January 1, 1998 **and January 1, 2005**;
- (3) "[VOC Content]_{Baseline}" **means 80 percent VOC**
 "Baseline VOC," ——— the lowest of either:
 (A) — the pre-reformulation VOC content established by the formulation data required under section 94563(a)(7) for the year before the product was reformulated to meet the 55 percent standard, or
 (B) — 80 percent VOC;
- (4) "[VOC Content]_{Reformulated} Reformulated VOC_{year i}" **means** the highest of the three values for percent by weight total VOC content for the reformulated product **as reported in the application pursuant to section 94563 (a)(6)(A)** for year i established by the test results prescribed per section 94563(a)(8);
- (5) "Documented Sales_{HCP} California Sales_{year i}" **means documented sales for the credit generation period as reported in the application pursuant to section 94563 (b)(1)** represents the responsible party's

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~~documented California sales for the year i in units of pounds as specified in section 94563(b);~~

(The quantities represented in the equations specified in this subsection (a) would have to be adjusted to take the compliance margins of test methods into account)

(b) For the purposes of the calculation methodology specified in subsection (a), **the following conditions shall apply:**

(1) Tier 1 HERCs shall be calculated if the "Documented Sales_{HCP}" using California sales are for a credit generation period that occurs between January 1, 1998 and June 1, 1999, and if "[VOC Content]_{Reformulated}" is 55 percent VOC, or less; and

(2) Tier 2 HERCs shall be calculated if the "Documented Sales_{HCP}" are for a credit generation period that occurs between using California sales that occur after January 1, 1998 and January 1, 2005, and if "[VOC Content]_{Reformulated}" is less than 55 percent VOC; and

(3) In accordance with section 94563(c)(3), HERCs shall not be calculated unless the Executive Officer has approved the methodologies used to calculate documented sales and gross California sales;

(4) "[VOC Content]_{Reformulated}" shall be verified by formulation data and test results in accordance with section 94515, Title 17, California Code of Regulations;

(5) "Documented Sales_{HCP}" shall be calculated for a credit generation period of no longer than 365 days;

(6) HERCs shall not be calculated for reformulated products for which the approximate date on which sales in California began, as reported in the application, was before January 1, 1993; and

(7) "Documented Sales_{HCP}" shall account for 75 percent or more of the corresponding "gross California sales."

94565.

Issuance of Hairspray Emission Reduction Credits.

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Within 90 days after the receipt of a complete application containing all the information required in section 94563, the Executive Officer shall decide whether to issue HERCs to the responsible party that submitted the application. The responsible party and the Executive Officer may mutually agree to a longer time period for the Executive Officer to make a decision. After evaluation of an application, the Executive Officer shall ~~only certify issue~~ HERCs **that are calculated using the protocol specified in section 94564 and are otherwise in compliance with this article and federal requirements.** **Furthermore, the Executive Officer shall only certify HERCs for applications containing information that is valid to the satisfaction of the Executive Officer.** after certifying that the HERCs meet the following requirements The Executive Officer shall issue HERCs by means of an Executive Order that certifies the HERCs as follows:

- ~~(a) all HERCs are calculated using the protocol specified in section 94564.~~
- ~~(a b)~~ All HERCs are denominated in units of pounds of surplus VOC emission reductions **that occurred in a particular credit generation year; and**
- ~~(b c)~~ Every HERC is designated with **an expiration date that is five years after the date of issuance by Executive Order or** a January 1, 2005, expiration date, **whichever is later,** after which the ability to use the credit ceases.
- ~~(d) All HERCs are otherwise in compliance with this article and other state and federal requirements for interchangeable emission reduction credits.~~

94566. Registration and Trading of Hairspray Emission Reduction Credits.

- (a) The Executive Officer shall maintain a HERC Registry specifying all HERCs held in HERC Accounts by each person. Each HERC Account will list information about the holder, quantities, credit generation ~~periods~~ **years** 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 for HERC Account information designated (in writing to the Executive Officer) as confidential by a HERC Account holder in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Records), Title 17, California Code of Regulations.

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- (b) The Executive Officer shall amend account information in the HERC Registry upon any of the following actions:
 - (1) **HERC issuance in accordance with section 94565;**
 - (2+) HERC transfer to **an existing or a newly created HERC Account** ~~another existing HERC Account or to a newly created HERC Account,~~ in accordance with subsection (c);
 - (3-) HERC use in accordance with section 94567;
 - (4) **credit or debit to a HERC account to correct for differences between "Projected Excess Emissions" and "Actual Excess Emission," in accordance with section 94567 (d)(5);**
 - (5-) change of name, ownership, or other pertinent information of a HERC Account holder; **or**
 - (6+) expiration of unused HERCs as required by section 94565(~~b e~~); ~~or~~
 - (5) ~~retirement of a HERC for an environmental benefit.~~
- (c) Any person may acquire HERCs through purchase, trade or other means of transfer from any HERC Account holder. The following requirements shall govern the transfer of HERCs:
 - (1) The transfer of HERCs shall be effective only upon amendment by the Executive Officer of the HERC Registry.
 - (2) The Executive Officer shall not amend the HERC Registry unless the provider and recipient have jointly filed a Registration of HERC Transfer. A Registration of HERC Transfer shall include the following information:
 - (A) identification of the provider and recipient (For some transfers, the provider and recipient could be the same.); **and**
 - (B) information on the transferred HERCs, including quantities, credit generation ~~periods~~ **years**, and expiration dates; ~~and~~

~~(C) — the transaction date and the date on which the transfer is to be effective:~~

- (3) Joint registration may be submitted by an agent, broker or other intermediary representing the provider and recipient.

94567. Use of Hairspray Emission Reduction Credits.

(a) **Summary of Uses.** Upon approval by the Executive Officer, HERCs may be used as follows:

- (1) A responsible party for an antiperspirant, deodorant, aerosol coating product, or other consumer product regulated by the Air Resources Board pursuant to sections 94500-94506.5, 94507-94517 or 94520-94528, Title 17, California Code of Regulations, who is also a HERC Account holder may use HERCs to obtain additional days (**i.e. delayed compliance period**) for a particular product to comply with a VOC standard set forth in sections 94502, 94509 or 94522, Title 17, California Code of Regulations. **During a delayed compliance period, the responsible party shall comply:**

(A) with the VOC content they report in the application process, instead of the applicable VOC standard, and

(B) all other applicable requirements specified in sections 94500-94506.5, 94507-94517 or 94520-94528, Title 17, California Code of Regulations

~~The following formula shall be used to determine how many additional days after the effective date of a standard a user of HERCs would have to comply for a particular product:~~

$$\begin{array}{l} \text{Additional} \\ \text{Time to} \\ \text{Comply} \end{array} = \frac{\{\text{HERCs Used} \times 365 \text{ days}\}}{\{(\text{VOC Content} - \text{VOC Standard})_{\text{ADP}} \times \text{California Sales}\}}$$

where:

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- (A) ~~VOC Content~~ = ~~the percent by weight total VOC content of the product to the nearest 0.1 percent as reported under subsection (b)(7)(A):~~
- (B) ~~VOC Standard~~ = ~~the VOC standard for product as set forth by sections 94502, 94509 or 94522, Title 17, California Code of Regulations.~~
- (C) ~~California Sales~~ = ~~sales information for the product as reported under subsection (b)(8):~~

* *("ADJ" refers to the adjustment of these quantities to take the compliance margins of test methods into account.)*

- (2) **In accordance with section 94514(h), Title 17, California Code of Regulations**, a responsible party of a hairspray product who is also a HERC Account holder may use HERCs to mitigate ~~, in accordance with section 94514(h), Title 17, California Code of Regulations,~~ excess emissions that result from the granting of a variance as specified section 94514, Title 17, California Code of Regulations.
- (3) **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 approved by the Executive Officer.** *Use of HERCs in an Alternative Control Plan.*

(This would require changes to the Alternative Control Plan Regulation, sections 94540-94555, Title 17, California Code of Regulations.)

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

~~(4) Use of HERCs in another state credit program.~~

- (b) **HERC Use Application. Any HERC Account holder who wishes to use HERCs as specified in subsection (a) shall submit a written application to the Executive Officer. The application shall be certified by the applicant's signature to contain accurate information to the best of the applicant's knowledge. Any information submitted as confidential by a responsible party pursuant to this section shall be handled in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Records), Title 17, California Code of Regulations. For use of HERCs to delay compliance with another consumer products standard, as specified in subsection (a)(1), the HERC use application shall contain the following information, whereas applications for the other uses specified in subsection (a)(2) through (a)(4) shall only contain the information specified in subsection (b)(1) through (b)(3):** The Executive Officer shall only approve the use of HERCs as specified in subsection (a)(1) upon receipt of a Registration of HERC Use from the responsible party who wishes to use the HERCs. The Registration of HERC Use shall be certified by the responsible party's signature to contain accurate information to the best of the responsible party's knowledge. The Registration of HERC Use shall contain the following information:
- (1) identification of the ~~responsible party who is also a~~ HERC Account holder;
 - (2) information on the HERCs to be used, including quantities, credit generation ~~periods~~ years, and expiration dates;
 - (3) the amount of excess emissions for which the HERCs will be used to offset (for HERC use pursuant to subsection (a)(1), "Projected Excess Emissions" shall be calculated using the protocol specified in subsection (c))**
 - ~~(4)~~ the VOC standard for which the responsible party wishes additional time to comply;
 - ~~(5)~~ **(4)** the list of products (**i.e. applicable products**) for which the responsible party wishes additional time to comply with the standard identified under subsection (b)(3) (products must be formulated to vary **between different stock keeping units**, in total VOC content, and for each individual chemical ingredient, no more than two percent by weight from each other);

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- (6 5) the list of stock keeping units (**i.e. applicable stock keeping units**) belonging to each **applicable** product ~~listed under subsection (b)(4)~~;
- (7 6) product labels for each **applicable** stock keeping unit ~~listed under subsection (b)(5)~~;
- (8 7) the responsible party's most recent speciated formulation data for each **applicable** product ~~listed per subsection (b)(4)~~ including percent by weight values **to the nearest 0.1 percent** for:
 - (A) ~~total~~ VOC content (averaged data may be submitted for the different stock keeping units), and
 - (B) each compound present in the formulation, except compounds that amount to a combined concentration of one percent by weight or less (averaged data may be submitted for the different stock keeping units);
- (9 8) **documented sales for each applicable product for the most recent twelve-month period prior to the delayed compliance period for which documented sales records are available, and supporting documentation that shows how sales were calculated using the documented sales records and a methodology approved by the Executive Officer (see subsection (b)(11))** the responsible party's most recent official documentation of the pounds of product sold annually, by the holder for use in California for each product listed under subsection (b)(4);
- (10) **the list of contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine documented sales for all the applicable products;**
- (11) **a demonstration to the satisfaction of the Executive Officer of the validity of the methodologies used to calculate documented sales and gross California sales based on the documented sales records provided by the responsible party or the contact persons listed in subsection (b)(10);**

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- (12) calculations, for each applicable product, of the percentage of the gross California sales which is comprised of documented sales;
- (13) test results using a test method(s) specified in sections 94506, 94515 or 94526, Title 17, California Code of Regulations, as applicable, that verify the VOC content information specified in subsection (b)(8)(A) for each of three different production samples that were manufactured less than one calendar year before the beginning of the proposed delayed compliance period (when possible, the three samples shall be different stock keeping units with different formulations that represent the applicable product);
- (14) 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 own calculation of the number of additional days to be allowed for compliance for each product listed under subsection (b)(4), calculated using the formula specified in subsection (a)(1).

(c) Protocol for Calculation of Excess Emissions During a Delayed Compliance Period. The following formula shall be used to determine the amount of excess emissions occurring during a delayed compliance period of specified duration:

Projected Excess Emissions =

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

Actual Excess Emissions =

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

where:

(1) Projected Sales =

$$\frac{\text{Delayed Compliance Period}}{365 \text{ days}} \times \text{Documented Sales}_{\text{Previous Year}}$$

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- (2) **"Delayed Compliance Period" shall be denominated in days and not exceed 365 days for each HERC use application.**
 - (3) **"[VOC Content]_{Product}" means the VOC content of the product as reported in the HERC use application.**
 - (4) **"[VOC Standard]_{Product}" means the VOC standard for product as set forth by sections 94502, 94509 or 94522, Title 17, California Code of Regulations.**
 - (5) **"Documented Sales_{Previous Year}" means the documented sales, as reported in the HERC use application, for the product for the most recent twelve-month period prior to the delayed compliance period for which documented sales records are available. (The proposed methodology for calculating documented sales and gross California sales must be approved by the Executive Officer.)**
 - (6) **"Documented Sales_{Delayed Compliance Period}" means the documented sales for the product during the delayed compliance period, as reported pursuant to subsection (d)(5).**
- (d) **Administrative Procedures. The following conditions shall govern the administrative process for reviewing and approving a HERC use application:**
- (1) **Within 30 days of receipt of the 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) **Within 15 days of receipt of 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) Within 90 days of determining that application is complete, the Executive Officer shall approve (by means of Executive Order) the use of HERCs in accordance with subsection (a). The applicant and the Executive Officer may mutually agree to a longer time period for the Executive Officer to make a decision. The Executive Officer shall only approve the use of HERCs as specified in section (a)(1) after determining that:**
- (A) "Projected Excess Emissions" have been calculated correctly using the protocol specified in subsection (c);**
- (B) the methodologies specified in subsections (b)(11) are appropriate for determining accurate documented sales and gross California sales information;**
- (C) documented sales must account for 75 percent or more of the corresponding gross California sales; and**
- (D) the VOC Content, as reported in the application, must be verified by specified formulation data and test results in accordance with sections 94506, 94515 or 94526, Title 17, California Code of Regulations, as applicable.**
- (4) At the time of HERC use approval, the Executive Officer shall amend the applicant's HERC account to remove as many HERCs as are necessary to offset the resulting excess emissions, as specified in the application (i.e. "Projected Excess Emissions" for use pursuant to section (a)(1)).**
- (5) For HERC use pursuant to subsection (a)(1) only, the HERC Account holder shall submit to the Executive Officer within 120 days after the conclusion of the delayed compliance period, documented sales for the delayed compliance period. 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 based on the updated sales information. If correction of the HERC Account results in an overall negative balance of HERCs, the HERC Account**

holder shall reconcile the negative balance within one calendar year of the conclusion of the delayed compliance period.

- (c) ~~The Executive Officer shall only approve the use of HERCs as specified in subsection (a)(2) upon receipt of a Registration of HERC Use from the responsible party who wishes to use the HERCs. The Registration of HERC Use shall be certified by the responsible party's signature to contain accurate information to the best of the responsible party's knowledge. The Registration of HERC Use shall contain the information specified in subsections (b)(1) and (b)(2).~~
- (d) ~~Registration of HERC Use for uses specified in subsections (a)(3) and (a)(4).~~
- (e) ~~The Executive Officer shall only approve the use of HERCs as specified in subsection (a)(1) through (a)(4) after evaluating the Registration of HERC Use submitted in accordance with subsections (b) through (d) to ensure that the use of HERCs meets the criteria specified in subsection (a). Any information submitted as confidential by a responsible party as part of a Registration of HERC Use shall be handled in accordance with the procedures specified in sections 91000-91022 (Disclosure of Public Documents), Title 17, California Code of Regulations.~~

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- (f) ~~All of the uses specified in subsections (a)(1) through (a)(4) would have to be approved by the Executive Officer after ARB staff determines that the use of the HERCs will be consistent with federal and state requirements for the use of interchangeable emission reduction credits.~~
- (g) ~~Upon receipt of a complete Registration of HERC Use containing all the information required in subsections (b) through (d), the Executive Officer will have 90 days to decide whether to approve the use of HERCs as specified in subsections (a)(1) through (a)(4).~~

94568. Violations Enforcement of this Article.

- (a) The following conditions would constitute violations of this article:**
 - (1) failure to reconcile a negative balance for a HERC Account;**
 - (2) provision of false information in the generation or use applications, or for the updated sales reporting requirement for HERC use**
- (b) If a product is found to exceed the reported VOC content during a delayed compliance period, the violation would be treated the same as a violation of the VOC standards in the Consumer Products Regulations.**