

**EARLY REDUCTION CREDIT PROGRAM (ERCP)
FOR HAIRSPRAYS**

(Note: The purpose of this document is to present the ARB staff's preliminary concepts for the Early Reduction Credit Program for Hairsprays. Staff will be asking for industry comments on these concepts at the June 5, 1997, meeting. The text shown in underline denotes placeholders for concepts that still need to be developed after more discussion with stakeholders.)

Draft Regulatory Language

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

Article 5. Early Reduction Credit Program for Hairsprays

94560. Purpose.

The purpose of this article is to provide a voluntary program that rewards and provides an incentive for early 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. 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 and with the State Implementation Plan.

94561. Applicability.

This article shall apply to:

- (a) the calculation, certification, issuance, 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, the following definitions shall apply in addition to the definitions set forth in section 94508, 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 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 or state permitting or registration requirements.
- (c) "Credit Generation Year," means the calendar year in which a reformulated product results in surplus VOC emission reductions.
- (d) "Credit Program," means a state rule or regulation that allows for the transfer and use of interchangeable emission reduction credits.
- (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) "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.

- (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.
- (i) "Surplus," means that the VOC emission reductions are not required by any local, state or federal permit, rule, regulation, law, or ordinance, or the State Implementation Plan.
- (j) "Surplus Reduction," means the same as is defined in section 94542(a)(26), Title 17, California Code of Regulations.

94563. Application Process.

Any hairspray responsible party requesting HERCs for a particular credit generation year must submit a written, two-part application to the Executive Officer. Each part of the application 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) The first part of the application must include the following:
 - (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
 - (3) a list of all stock keeping units for each reformulated product listed under subsection (a)(2);

- (4) the credit generation year for which the responsible party requests HERCs for the reformulated product 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 stock keeping unit listed under subsection (a)(3);
- (6) speciated formulation data for each reformulated product listed per subsection (a)(2) for the credit generation year listed per subsection (a)(4) including percent by weight values 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);
- (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 year listed in subsection (a)(4), (the three samples shall represent the widest variety of stock keeping units as possible);
- (9) the date California sales began for each 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 year listed per subsection (a)(4), calculated by using the protocol specified in section 94564.

- (b) The second part of the application may be submitted at a later date after the conclusion of the credit generation year. The second part of the application must include the 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).

(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.)

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 year in units of pounds of VOC emission reductions for each reformulated product listed in section 94563(a)(2) for the credit generation year listed in section 94563(a)(4):

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

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

where:

- (1) "**Tier 1 HERCs**_{year i}," represent HERCs for year i for 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}," represent HERCs for year i for emission reductions resulting from reformulations below the 55 percent VOC hairspray standard that occur after January 1, 1998;
- (3) "**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) "**Reformulated VOC**_{year i}" = the highest of the three values for percent by weight total VOC content for the reformulated product for year i established by the test results prescribed per section 94563(a)(8);
- (5) "**California Sales**_{year i}" represents the responsible party's documented California sales for 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), Tier 1 HERCs shall only be calculated using California sales that occur between January 1, 1998 and June 1, 1999, and Tier 2 HERCs shall only be calculated using California sales that occur after January 1, 1998.

94565. Issuance of Hairspray Emission Reduction Credits.

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 issue HERCs after certifying that the HERCs meet the following requirements:

- (a) All HERCs are calculated using the protocol specified in section 94564.

- (b) All HERCs are denominated in units of pounds of surplus VOC emission reductions that occurred in a particular credit generation year.
- (c) Every HERC is designated with a January 1, 2005, expiration date 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 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.
- (b) The Executive Officer shall amend account information in the HERC Registry upon any of the following actions:
 - (1) HERC transfer to another existing HERC Account, or to a newly created HERC Account, in accordance with subsection (c);
 - (2) HERC use in accordance with section 94567;
 - (3) change of name, ownership, or other pertinent information of a HERC Account holder;
 - (4) expiration of unused HERCs as required by section 94565(c); 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.)
 - (B) information on the transferred HERCs, including quantities, credit generation 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) 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 time for a particular product to comply with a VOC standard set forth in sections 94502, 94509 or 94522, 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:

Additional [HERCs Used x 365 days]

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$$\text{Time to Comply} = \frac{\text{-----}}{[(\text{VOC Content} - \text{VOC Standard})_{\text{ADJ}} * \text{California Sales}]}$$

where:

- (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) 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) 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) Use of HERCs in another state credit program.
- (b) 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:

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- (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 years, and expiration dates;
- (3) the VOC standard for which the responsible party wishes additional time to comply;
- (4) the list of 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 in total VOC content, and for each individual chemical ingredient, no more than two percent by weight from each other);
- (5) the list of stock keeping units belonging to each product listed under subsection (b)(4);
- (6) product labels for each stock keeping unit listed under subsection (b)(5);
- (7) the responsible party's most recent speciated formulation data for each product listed per subsection (b)(4) including percent by weight values 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);
- (8) 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); and

- (9) The responsible party's 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) 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.
- (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. Enforcement of this Article.