I.

INTRODUCTION AND EXECUTIVE SUMMARY

A. INTRODUCTION

At the direction of the Air Resources Board (ARB or Board) at its March 1997, meeting, ARB staff has developed the proposed Hairspray Credit Program. The goal of this voluntary program is to provide an incentive for hairspray businesses (manufacturers or marketers) to come into early compliance with the 55 percent volatile organic compound (VOC) standard, and to reward those businesses that put forth the effort to develop products with lower VOC levels than required. Participating businesses who comply early, or over comply, with the 55 percent standard can earn hairspray emission reduction credits (HERCs or credits). The credits may then be bought, sold, or traded by consumer product businesses for various uses.

By design, the proposed program is a voluntary program that will provide hairspray businesses earning HERCs with the opportunity to benefit through their ability to use, sell, or trade the credits. The program supplements the existing ARB consumer products regulations (see Chapter II) by providing businesses with additional flexibility for formulating products. Adoption of regulatory language to establish the program is proposed as a new Article 5, Hairspray Credit Program, sections 94560-94568, in Title 17, California Code of Regulations (Appendix A). Staff is also proposing minor amendments to sections of the consumer products regulations (sections 94502, 94509, 94522, and 94548, on antiperspirants and deodorants, various categories of consumer products, aerosol coatings, and the Alternative Control Plan, respectively) to allow the use of credits as an alternative method to comply with the requirements specified in these sections.

This report presents the proposed program and details the steps taken by staff in its development. This chapter, Chapter I, Introduction and Executive Summary, provides an introduction, discussion, in question-and-answer format, and our recommendations regarding the proposed program. Chapter II, Background, provides background information on (1) the history and structure of the California consumer products regulations, (2) emission credit programs, and (3) related federal requirements. Chapter III, Overview: Need for the Hairspray Credit Program and Alternatives, describes (1) the development and need for the proposed program, (2) the program goals, (3) general concepts and elements, and (4) alternatives to the proposed program. Chapter IV, Summary of Proposed Regulation, provides a "plain English" summary of the proposed regulation and briefly describes related amendments to the existing consumer products regulations. Chapter V, Impacts Assessment, provides staff's assessment of the potential environmental, State Implementation Plan, and economic impacts of the proposed program.

B. EXECUTIVE SUMMARY

For clarity, the summary is presented in question-and answer format using commonly asked questions about the proposed program. It should be noted that the summary provides only brief discussions on these topics. The reader is directed to subsequent chapters in the main body of the report for more detailed discussions.

1. What is the Hairspray Credit Program?

The proposed Hairspray Credit Program is a voluntary, market-based regulation providing for both emission credit generation and use within the consumer products arena. As such, it will supplement the existing ARB consumer products regulations and provide a high level of flexibility to participating parties.

2. Why was the program proposed?

On March 27, 1997, the Air Resource Board, as part of its action to amend the consumer products regulation pertaining to hairspray which delayed the effective date of the second-tier hairspray standard by 17 months, directed staff to develop an early reduction credit program for those businesses that had put forth an effort to comply by the original effective date, January 1, 1998. The Board also wanted to provide an incentive to manufacturers to produce and sell 55 percent VOC hairsprays before June 1, 1999. The program, as proposed by staff, provides an incentive for the manufacture and sale of hairspray products with VOC levels lower than the 55 percent VOC standard.

3. How did ARB develop the Hairspray Credit Program?

Staff held five discussion meetings with interested parties during the development of the proposed program and spoke with industry and other government regulatory representatives on several occasions at both their request and our initiative. Staff first explored preliminary concepts for the proposed program with interested parties at an April 16, 1997, initial discussion meeting. Staff then prepared a first draft regulation, for discussion only, for an early reduction credit program for hairsprays. At a June 5, 1997, discussion meeting, participants from industry provided generally favorable comments on the initial draft. At the same time, they expressed the desire for a program that is flexible and simple. Staff also received written comments from the United States Environmental Protection Agency (U.S. EPA). After considering both the oral and written comments received, staff revised the regulation and held a telephone conference meeting on July 10, 1997, to discuss a second draft. In addition to the oral comments received on July 10, 1997, staff received written comments from the U.S. EPA and the Cosmetic, Toiletry, and Fragrance Association

(CTFA). On September 10 and September 15, 1997, subsequent telephone conference meetings were held to discuss additional revisions to the draft regulation.

The current proposed regulation incorporates many of the thoughtful suggestions provided by the commenters. Staff tried to maximize flexibility and provide for as simple a program as possible, while ensuring public health protection.

4. What businesses can participate in the proposed program?

Only businesses with a hairspray product may be awarded credits for surplus emission reductions. However, a broader group, consumer products businesses which are subject to applicable requirements of the existing California consumer products regulations, may use the credits.

5. Who administers the proposed program?

Using existing staff resources, the Executive Officer will administer the Hairspray Credit Program. Applications to request credits for surplus emission reductions and use of credits must be submitted to the Executive Officer for approval. The Executive Officer will maintain the HERC Account Registry which is the official record of all credit holdings and transactions.

6. What are the program fees?

The proposed program does not require application fees or any other fees.

7. How can my hairspray business create credits?

Your business may qualify for credits if you have a hairspray product that complies early, or over complies, with the second-tier (55 percent VOC) hairspray standard prior to June 1, 1999. In other words, your hairspray product must have a VOC content of 55 percent or lower. Your hairspray product may qualify for credits for over compliance with the hairspray standard after June 1, 1999, under certain circumstances. For example, after June 1, 1999, you may reformulate a hairspray product to lower than 55 percent VOC with the intent of generating credits for over compliance with the hairspray standard. However, the proposed program does not allow the generation of credits from products manufactured after January 1, 2005.

8. How can my business use credits?

You may use the credits to obtain additional time (i.e., a delayed compliance period) for a product to comply with its applicable VOC standard set forth by the existing ARB consumer products regulations. The credits may be used to mitigate excess emissions resulting from the granting of a variance from the hairspray standard. Businesses with an Alternative Control Plan approved by the Executive Officer may use the credits to reconcile any shortfalls (excess emissions) occurring during a compliance period. You may retire credits to provide an environmental benefit. The first three uses require the submittal of an application to the Executive Officer for approval. The Executive Officer will deny the use of the credits if such use would result in an increase in emission of a toxic air contaminant (TAC) as defined in Health and Safety Code section 39657(b). In addition, credits may not be used after January 1, 2010.

9. When will the program begin?

The program is intended to begin on January 1, 1998; surplus emissions reductions occurring on or after that date may qualify as credits. (Interested parties should note that, although the Board is scheduled to consider adoption of the proposed program at its November 1997, public hearing, the program does not become state law until it is approved by the Office of Administrative Law. Therefore, the Executive Officer is prepared to accept applications after the Board adopts the proposed program, but will not issue credits, or approve the use of credits, until the program becomes state law.)

10. What are the environmental impacts of the proposed program?

The primary environmental benefit of the proposed program will be a decrease in volatile organic compound emissions from the hairsprays used to generate credits. While the overall environmental impact of the proposed program will be determined by the balance between credit generation and credit use, staff anticipates an overall environmental benefit because more credits are likely to be generated than will be used. Staff anticipates that many businesses using credits to delay compliance with a consumer product standard will intentionally acquire more credits than they think they will use, in order to provide a buffer against incurring penalties. Also, some companies that generate credits may simply hold on to some of them until the credits expire due to the limited market for credits, or other factors. Staff has determined that the proposed regulation will have no impact on stratospheric ozone depletion and a negligible impact on global warming.

The use of credits to delay compliance with upcoming standards for other consumer products will, in effect, shift the time the volatile organic compound emissions occur and the type of product producing the emissions. Staff have determined that the potential impacts of such shifts are minimal for several reasons. First, the likely amount of credits that could potentially be generated represents a relatively small amount of VOC emissions, even if the credits accumulate over time. Second, the market for credits is likely to be spread out over a number of years due to the different effective dates for the upcoming consumer product standards, from January 1, 1999 to January 1, 2005. Thus, it is unlikely that all the credits generated under the proposed program will be used in any one time period. Also, the potential market for credits is spread out over greater than 50 different product categories of diverse types with widespread use throughout California. Thus, significant regional shifts in emissions due to credit use is unlikely. Further, safeguards have been included in the proposed regulation to ensure that shifts in emissions due to credit use will not result in the emissions of more toxic air contaminants than would otherwise occur, and that such shifts will not compromise the commitments made in the State Implementation Plan for Ozone.

11. What are the economic impacts of the proposed program?

The proposed program is expected to have positive impacts on most hairspray manufacturers. The program provides hairspray manufacturers with an alternative compliance option in which they can choose to participate. No business, thus, is expected to participate unless it finds that its participation would be economically advantageous. Staff anticipates that the greater flexibility afforded by the program would result in innovation and cost savings. As a result, staff expects that the program would bring about an overall reduction in costs of compliance to businesses affected by the existing consumer products regulations. The extent of this reduction, of course, depends upon the level of participation by affected businesses in the program.

Staff also determined that the proposed program would have overall positive impacts on California employment, business competitiveness, and business status. Since the program is designed to award innovation, hairspray manufacturers which choose to participate are expected to experience lower compliance costs. The cost savings, whether they are kept by affected businesses or passed on to consumers in the form of lower prices, would result in an improvement in California business competitiveness and an expansion of output and employment in the affected industries or other industries. However, staff recognizes that some small businesses may not be able to take advantage of the flexibility afforded by the program as effectively as large businesses, resulting in a potential deterioration of their relative competitive position in the market place.

12. What are the State Implementation Plan (SIP) impacts of the proposed program?

The SIP commits to an overall 85 percent reduction in consumer product emissions of VOCs from 1990 levels by 2010. The proposed program contains several features designed to preserve those commitments. One feature requires that all credits generated under the program expire on or before 2010, ensuring that all planned VOC reductions occur by that date. Several safeguards are also included to ensure that credit use does not interfere with SIP commitments. The Executive Officer will conduct an annual analysis of the Hairspray Credit Program and report triennially to the United States Environmental Protection Agency (U.S. EPA) as part of ARB's milestone compliance demonstration for the consumer product element of the SIP. If the Executive Officer finds any adverse impact on the SIP due to the proposed program, (s)he can take specific actions. The Executive Officer can deny applications for credit use until the shortfall is reconciled, and can propose amending the program to further restrict the use of credits or to set aside a portion of credits to compensate for shortfalls.

13. Are there Federal regulations that affect the proposed program?

The U.S. EPA published a proposed rule, National Volatile Organic Compound Emission Standards for Consumer Products, in April 1996 (U.S. EPA, 1996). That proposed rule is similar to the ARB's consumer products regulations, although there are some differences; the ARB requirements are generally more stringent. Regarding hairsprays, the proposed U.S. EPA rule specifies a VOC content limit for hairsprays of 80 percent, which is the same as ARB's first tier hairspray standard. ARB's second-tier, 55 percent VOC standard for hairsprays is more stringent than the proposed U.S. EPA rule requires and predates the proposed U.S. EPA rule by several years.

In April 1994, the U.S. EPA published rules governing state and local economic incentive programs (EIPs), which include some emission credit programs. Any federally mandated EIP must be consistent with the U.S. EPA's EIP rules. The U.S. EPA also specified that the EIP rules can be used as guidance for discretionary state programs, such as the proposed Hairspray Credit Program. Because the proposed program is not mandatory, staff drew upon the EIP rules as guidance. Consistent with using the EIP rules as guidelines, the proposed program generally incorporates the program elements outlined in the EIP.

14. Are there alternatives to the proposed program?

In the absence of the proposed program, hairspray businesses currently can not obtain credits for surplus emission reductions. In the future, however, they may be able to participate in local air pollution control district/air quality management district credit programs such as the Intercredit Trading Program being developed by the South Coast Air Quality Management District. Any such local program would be required to meet State requirements for interchangeable emissions credits.

While the proposed program is intended to provide flexibility to consumer products businesses, existing regulations provide businesses with several alternatives for complying with applicable requirements, including the exemption for an innovative product, the Alternative Control Plan, and the ability to request a variance. The ARB incorporated an innovative product provision into existing regulations in recognition of certain unique aspects of product formulations and packaging; the provision allows a product to exceed the applicable standards, provided emissions from the use of the product are less than the emissions from the use of a complying representative product. The voluntary Alternative Control Plan option allows participants to average, or "bubble," the emissions from more than one product; the overall emissions may not exceed the sum of the emissions that would have been allowed if all products complied with their applicable standards. The ARB has provided to businesses a variance process by which they may request an extension of their compliance dates, following the showing of specific findings.

C. RECOMMENDATIONS

Staff recommends that the Board approve the proposed additions and amendments to the consumer products regulations.