

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 8.5 Consumer Products

Article 4. Alternative Control Plan

§ 94547. Surplus Reductions and Surplus Trading.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the date the transfer is to become effective;

(B) the date the Surplus Reductions being traded are due to expire;

(C) the amount (in pounds of VOCs) of Surplus Reductions that are being transferred;

(D) the total purchase price paid by the buyer for the Surplus Reductions;

(E) the contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the Surplus Reductions;

(F) a copy of the Executive Officer-issued Surplus Reductions Certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the Surplus Reductions. The copy shall show the amount of any remaining non-traded Surplus Reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the Surplus Reductions fully understand the conditions and

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limitations placed upon the transfer of the Surplus Reductions and accept full responsibility for the appropriate use of such Surplus Reductions as provided in this section.

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

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

(1) For the purposes of this subsection (c), “early reformulation” means a reformulation of an ACP product which results in a reduction in the product’s VOC Content, and which occurs during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the Executive Officer. “Early reformulation” does not include any reformulation which occurs more than one year prior to the date on which the ACP application is submitted to the Executive Officer.

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

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

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

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

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

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

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

where,

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

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

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

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

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

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

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

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

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

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

REFERENCE