

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

PROPOSED AMENDMENTS TO THE SMALL CONTAINERS OF AUTOMOTIVE
REFRIGERANT REGULATION

Public Hearing Date: April 22, 2016

Public Availability Date: August 26, 2016

Deadline for Public Comment: September 12, 2016

At its April 22, 2016 public hearing, the Air Resources Board (ARB or Board) approved for adoption the proposed amendments to the California Code of Regulations (CCR), title 17, sections 95362, 95364, 95366, 95367, and 95369, and to Section 2.3(B) of the incorporated document "Certification Procedures for Small Containers of Automotive Refrigerant," and the proposed adoption of new sections 95364.1 and 95367.1, as modified by staff's suggested modifications and presented to the Board at the April 22, 2016 hearing.

The proposed amendments and new regulatory sections would: add details to the requirement that retailers must transfer unclaimed consumer-retailer deposits to the manufacturer or its designee; establish new quarterly recordkeeping and reporting requirements to ensure that retailers comply with this obligation; expand the scope of projects that manufacturers or their designees may fund with unclaimed consumer-retailer deposits and unclaimed manufacturer-retailer and manufacturer-distributor deposits; fix the consumer-retailer deposit at \$10; eliminate the provisions for increasing or decreasing the consumer-retailer deposit; allow a one-year sell-through for small containers of automotive refrigerant packaged or manufactured between January 1, 2010 and the effective date of the proposed amendment; and require additional language on labels for small containers of automotive refrigerant that forbids venting refrigerant into the atmosphere, and that instructs consumers to either return non-empty containers to retailers or retain and use such containers until they are empty.

At the hearing, staff presented, and the Board approved for adoption, modified regulatory language developed in response to comments received since the Initial Statement of Reasons was released to the public on March 1, 2016. These modifications include: replacing the initially proposed one-year sell through requirement with a requirement that any small container of automotive refrigerant manufactured more than one year after the effective date of the proposed amendments that is not labeled in compliance with the proposed new container labeling requirements may not be sold in California; changing the frequency of requirements for retailers to transfer unclaimed consumer-retailer deposits to manufacturers or their designees, and to report unclaimed consumer-retailer deposits that retailers collect and that are transferred to

manufacturers or their designees from quarterly to semi-annually; and to limit the proposed container labeling requirements to only require language that forbids the venting of refrigerant into the atmosphere.

The Board directed the Executive Officer to make the modified regulatory language, and any additional conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days as required by Government Code section 11346.8. The Board further directed the Executive Officer to consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days, and present the regulation to the Board for further consideration if warranted, or take final action to adopt the regulation after addressing all appropriate modifications.

The resolution and all other regulatory documents for this rulemaking are available online at the following ARB website:

<https://www.arb.ca.gov/regact/2016/smallcans2016/smallcans2016.htm>

The text of the modified regulatory language for the California Code of Regulations, title 17 sections 95362, 95364.1, 95366, 95367, 95367.1, and 95369 is shown in Attachment 1. The text of the modified incorporated document entitled "Certification Procedures for Small Containers of Automotive Refrigerant" is shown in Attachment 2. The originally proposed regulatory language is shown in ~~striketrough~~ to indicate deletions and underline to indicate additions. New deletions and additions to the proposed language that are made public with this notice are shown in ~~double striketrough~~ and double underline format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods. The Administrative Procedure Act requires that staff respond to comments received regarding all noticed changes. Therefore, staff will only address comments received during this 15-day comment period that are responsive to this notice, documents added to the record, or the changes detailed in Attachments 1 and 2.

Summary of Proposed Modifications

The following summary does not include all modifications to correct typographical or grammatical errors, changes in numbering or formatting, nor does it include all of the non-substantive revisions made to improve clarity.

- I. **Modifications to California Code of Regulations (CCR), title 17 Sections 95362, 95364.1, 95366, 95367, 95367.1, and 95369**
 - A. Section 95364.1. As part of the 45-day notice, staff proposed the establishment of a one-year period after the amendments become effective, during which period of time product containers with existing labels can be sold in order to allow

retailers to deplete their existing inventory. At the end of this period, product containers with the old labeling must be removed from the retailers' shelves. Manufacturers must notify their customers of the non-compliant products that are sold during the sell-through period and the date that the period will end. This notification must be provided within six months of the end of the sell-through period. Manufacturers would have to recall any containers after the sell-through period expires, and would report the total number of product containers that are recalled. Based on requests from manufacturers and retailers that they be provided additional time to implement the new container labeling requirements and to avoid the necessity of recalling noncompliant containers, staff is now proposing to substitute the initially proposed one-year sell-through requirement for small containers of automotive refrigerant packaged or manufactured between January 1, 2010 and the effective date of the proposed amendment, with a provision exempting these small containers of automotive refrigerant that are packaged or manufactured for sale, supply, or offered for sale in California from the proposed new container labeling requirements until December 31, 2017.

- B. Section 95366(a)(4). As part of the 45-day notice, staff proposed to add details to the requirement that retailers must transfer unclaimed consumer deposits to the manufacturers. Specifically, retailers must transfer all deposits not claimed within 90 days of purchase to the manufacturers of the products. This transfer is to take place within 30 days after the end of each calendar quarter in which the retailers have retained the unclaimed deposits for at least 90 days. Staff is now proposing to modify this section to allow retailers to transfer unclaimed consumer-retailer deposits to manufacturers or their designees on an annual basis instead of on a quarterly basis. This change would be consistent with the other existing annual reporting requirements for sales data and returned can data in section 95367(a)(1), and would allow retailers to submit one report only on an annual basis. Staff is also proposing to delete a previously proposed provision that limited a retailer's obligation to transfer only consumer-retailer deposits unclaimed within 90 calendar days of the sale to provide greater flexibility to retailers by allowing them to accommodate returns after 90 days, and to further specify that annual transfers of unclaimed deposits for a calendar year must be made by April 1 of the following calendar year.
- C. Section 95366(a)(5). Staff is proposing this new subsection to provide retailers the option to defer transferring unclaimed consumer-retailer deposits to manufacturers if the amount of deposits that retailers return or refund to consumers under section 95366(a)(3) exceed the amount of deposits collected under section 95366(a)(1). This option is only available during the first year that the proposed amendments are effective, retailers must transfer the deferred unclaimed consumer-retailer deposits to manufacturers in the next reporting period, and indicate in the reports they are required to maintain under section 95369(b) that they are utilizing this option. This new section would allow retailers to avoid situations in which they must provide greater funds for returned containers than they collected during the same period for the first reporting

period (partial year). In the following reporting period (whole year), such situations are not anticipated.

- D. Section 95366(b)(5). Staff is proposing to add “or its designee” in two locations to clarify that a manufacturer is allowed to designate a third party to manage the enhanced education programs. This is developed based on stakeholders’ input since it would provide greater flexibility to them and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).
- E. Section 95366(b)(6). Staff is proposing to add “or its designee” or “or their designees” in three locations to clarify that a manufacturer is allowed to designate a third party to manage the enhanced education programs. This is developed based on stakeholders’ input since it would provide greater flexibility to them and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).
- F. Section 95366(b)(7). Staff is proposing this new subsection to allow a manufacturer to specify an entity for the purposes of collecting, managing, and spending the consumer deposits that retailers transfer to manufacturers pursuant to section 95366(a)(4). This designation is subject to advance review and approval by ARB’s Executive Officer. This is developed based on stakeholders’ input since it would provide greater flexibility to them and improve program efficiency.
- G. Section 95367(a). Staff is proposing to add “except the spending plan described in section 95367(a)(6)” to clarify the reporting due dates. Most of the reports to the Executive Officer are due annually on March 1, while the outreach plan is due annually on May 1, commencing in 2017.
- H. Section 95367(b). This section specifies that ARB will calculate and publish the annual return rate for containers of refrigerant, which provides the basis for the consumer-retailer deposit adjustment provision. Since staff proposes to fix the consumer-retailer deposit at \$10 thereby eliminating the provision for increasing or decreasing the consumer-retailer deposit, section 95367(b) is no longer needed. Therefore, staff is proposing to delete this section.
- I. Section 95367(a)(1). As part of the 45-day notice, staff proposed to add a new section 95367.1 to specify that retailers must report on a quarterly basis the amount of deposits collected from consumers under section 95366(a)(1) that are not returned or refunded to consumers under section 96366(a)(3), and the amount of those deposits that retailers subsequently transfer to manufacturers under section 95366(a)(4). Because staff is now proposing to change the reporting frequency from quarterly to annually, to be consistent with the other existing reporting requirements for sales data and returned can data specified in section 95367(a)(1), staff is proposing to move the reporting requirements of

previously proposed section 95367.1 to this section, and to delete section 95367.1.

- J. Section 95367(a)(5). Staff is proposing to specify that a manufacturer or its designee must annually report the amount of unclaimed deposits retained from the manufacturers and the retailers during the previous calendar year. In addition, the manufacturer or its designee must report how unclaimed deposit money was spent during the previous calendar year. This reporting requirement is needed to clarify what deposits should be reported and to assess the program effectiveness. The proposal to allow a manufacturer's designee to prepare reports was developed based on stakeholders' input since it would provide them greater flexibility and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).
- K. Section 95367(a)(6). Staff is proposing this new subsection to require a manufacturer or its designee to submit plans describing how it anticipates spending funds generated from unclaimed consumer-retailer, and manufacturer-retailer or manufacturer-distributor deposits collected during the previous calendar year. This subsection specifies the required elements of the plans, requires manufacturers or their designees to submit such plans by May 1 of every year, and states that ARB Executive Officer review and approval of a plan is required before a manufacturer or its designee can begin expending funds. This section is needed for staff and stakeholders to oversee the spending plan and ensure they are well developed and implemented. The proposal to allow a manufacturer's designee to submit plans was developed based on stakeholders' input since it would provide them greater flexibility and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).
- L. Section 95367.1. Staff is proposing to delete this section since the requirements for retailers to file annual reports is being proposed to be moved to section 95367(a)(1).
- M. Section 95369(b)(2). Staff is proposing to add "or their designees" to clarify that a manufacturer is allowed to designate a third party to manage the enhanced education programs. This proposal was developed based on stakeholders' input since it would provide them greater flexibility and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).
- N. Section 95369(e). Staff is proposing to add "or its designee" to clarify that a manufacturer is allowed to designate a third party to manage the enhanced education programs. This proposal was developed based on stakeholders' input since it would provide them greater flexibility and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).

- O. Section 95369(f). Staff is proposing to add "or its designee" to clarify that a manufacturer is allowed to designate a third party to manage the enhanced education programs. This proposal was developed based on stakeholders' input since it would provide them greater flexibility and improve program efficiency, and is consistent with the proposed modifications to section 95366(b)(7).

II. Modifications to the Certification Procedures for Small Containers of Automotive Refrigerant

- A. Section 2.3(B)(4). Staff is proposing to change the requirement that the label contain the wording, "Do not vent contents to atmosphere" to contain only the words "Do not vent" based on concerns that small containers of refrigerant have limited space for labels.
- B. Section 2.3(B)(5). Staff is proposing to eliminate the requirement that new labels contain language that states, "If container has refrigerant remaining after usage, return to retailer or retain for additional use until empty" due to the limited space available on the containers for any additional labeling, and for consistency with existing regulatory requirements.
- C. Section 2.4(A)(8). Staff is proposing to delete this section. This section currently specifies a requirement for manufacturers to submit enhanced education programs as part of the product certification process. However, since this requirement is now addressed in section 95367 of the regulation, section 2.4(A)(8) is redundant and is no longer needed.

III. Other Minor Changes

- A. Section 95362. Staff is proposing to add a comma after the phrase "offered for sale" in subsections (b) and (c).
- B. Section 95366(a)(6). Staff is proposing to delete the word "may" in the first sentence and replace "complimentary" with "complementary" to correct two typographical errors.
- C. Section 95369(b). Staff is proposing to delete the word "quarterly" because the records are maintained on an annual basis.

Agency Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Mr. Michael FitzGibbon, P.E., Chief, Climate, Atmospheric Science and Economic Studies Branch, at (916) 323-2389 or Mr. Winston Potts (designated back-up contact), P.E., Air Resources Engineer, Air Quality and Climate Science Section, (916) 323-2537.

Public Comments

Written comments will only be accepted on the modifications identified in this Notice. Comments may be submitted by postal mail or by electronic submittal no later than 5:00 p.m. on the due date to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD



Richard W. Corey
Executive Officer

Date: August 26, 2016

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov