

State of California  
AIR RESOURCES BOARD

**Second Notice of Public Availability of Modified Text**

PROPOSED AMENDMENTS TO THE SMALL CONTAINERS OF AUTOMOTIVE  
REFRIGERANT REGULATION

Public Hearing Date: April 22, 2016  
First Public Availability Date: August 26, 2016  
Second Public Availability Date: October 11, 2016  
Deadline for Public Comment: October 26, 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 revisions and presented to the Board at the April 22, 2016 hearing.

With this notice, staff is proposing additional modifications to the new section proposed for CCR, title 17, section 95364.1. These modifications are in addition to those proposed in the first set of 15-day changes noticed on August 26, 2016.

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 April 22, 2016 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 included: 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 limiting 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.

In the first 15-day change document, staff proposed to substitute the initially proposed one-year sell-through requirement 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. Staff also proposed to require retailers to transfer unclaimed consumer-retailer deposits to manufacturers or their designees on an annual basis instead of on a quarterly basis. Reporting requirements are included with this transfer. Staff added a 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. The entity would be a third party that would be tasked with managing these funds for enhanced education programs for the benefit of consumers. Reporting and planning requirements were proposed for the third party.

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>

With this second 15-day notice, staff is proposing to modify the previously proposed sell-through provisions in CCR, title 17, section 95364.1. The text of the modified regulatory language is shown in Attachment 1. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. The deletions and additions to the proposed language that is made public with this second 15-day notice are shown in ***bold italic double underline*** to indicate additions and ~~***bold italic double underline***~~ ***strikeout*** to indicate deletions.

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 Attachment 1.

## **Summary of Proposed Modifications**

### **Modifications to California Code of Regulations (CCR), title 17, Section 95364.1**

Section 95364.1. Under the first 15-day notice, staff proposed to substitute a 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 containers that are packaged or manufactured for sale, supply, or offer for sale in California on or after the effective date of the amendments from the proposed new container labeling requirements until December 31, 2017. Based on a comment that the proposed 15-day revisions to 95364.1 could be interpreted to eliminate provisions that exempt small container manufacturers and packagers from complying with the container labeling requirements as specified in Section 2.3(b)(4) of the “Certification Procedures for Small Containers of Automotive Refrigerant,” adopted on July 20, 2009, as last amended on [adoption date], until December 31, 2017, and could further be interpreted to “prevent the sale of non-complying cans by both manufacturers and California retailers after December 31, 2017.” Staff is proposing revisions to clarify that this regulatory section only applies to small containers of automotive refrigerant that are either: (1) manufactured for sale, or (2) packaged for sale in California during the time period beginning on the effective date of the amendments and ending on December 31, 2017. The proposed revisions, when read together with the initial amendment to 95362(c) and existing section 95362(a), clarify that these affected small containers of automotive refrigerant are only exempted from the container labeling requirements as specified in Section 2.3(b)(4) of the “Certification Procedures for Small Containers of Automotive Refrigerant,” adopted on July 20, 2009, as last amended on [adoption date], until December 31, 2017, but may be sold in California on or after December 31, 2017.

## **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>

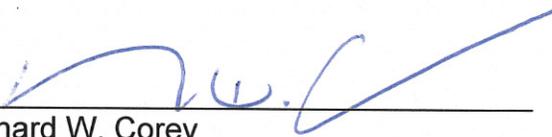
Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your comments, attachments, and associated contact information (e.g., your address, phone, etc.) become part of the public record and can be released to the public upon request.

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



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Richard W. Corey  
Executive Officer

Date: October 11, 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](http://www.arb.ca.gov)*