State of California
AIR RESOURCES BOARD

PROPOSED AMENDMENTS TO THE SMALL CONTAINERS OF AUTOMOTIVE REFRIGERANT REGULATION

Resolution 16-5

April 22, 2016

Agenda Item No.: 16-4-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the California Global Warming Solutions Act of 2006 (Assembly Bill 32; Stats 2006, ch. 488), Health and Safety Code section 38500 et seq.) (AB 32) declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California and provided initial direction on creating a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, AB 32 added section 38501 to the Health and Safety Code, which expresses the Legislature's intent that the Board coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32; and design emissions reduction measures to meet the statewide emissions limits for greenhouse gases in a manner that minimizes costs and maximizes benefits for California's economy, and maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

WHEREAS, section 38505 of the Health and Safety Code defines greenhouse gases as including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFC), perfluorocarbons, and sulfur hexafluoride;

WHEREAS, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions from sources or category of

sources, subject to the criteria and schedules specified in Part 4 of Division 25.5 of the Health and Safety Code;

WHEREAS, section 38560.5 of the Health and Safety Code requires the Board to publish and make available a list of discrete early action GHG emission reduction measures (early action measures) by June 30, 2007 and to adopt regulations to implement the listed early action measures on or before January 1, 2010;

WHEREAS, after a public hearing on June 21, 2007, the Board approved the Do-It-Yourself (DIY) Measure as an early action measure and directed staff to develop it into a regulation (Resolution 07-25);

WHEREAS, on January 22, 2009, the Board approved the adoption of the Regulation for Small Containers of Automotive Refrigerant: Article 4, Subchapter 5, Title 17, California Code of Regulations sections 95360 through 95370, the incorporated "Certification Procedures for Small Containers of Automotive Refrigerant," Test Procedure TP-503, "Test Procedure for Leaks from Small Containers of Automotive Refrigerant," and Balance Protocol BP-A1, "Balance Protocol for Gravimetric Determination of Sample Weights using a Precision Analytical Balance";

WHEREAS, the regulation established a certification program requiring manufacturers to equip small containers of automotive refrigerant with self-sealing valves and to demonstrate compliance with a specified leak rate, a container deposit and return program to recover and recycle the can heel (refrigerant remaining in used containers), and a container deposit provision to incentivize consumers to return used containers to retailers;

WHEREAS, non-professionals (i.e., DIYers) recharge their motor vehicle air conditioning (MVAC) systems by purchasing and using HFC-134a refrigerant in small containers that hold between 2 ounces and 2 pounds of refrigerant by weight;

WHEREAS, HFC-134a is a hydrofluorocarbon that is and has been the predominant refrigerant used in MVAC systems manufactured since 1995;

WHEREAS, HFC-134a is a potent GHG that has a global warming impact 1,300 times greater than carbon dioxide (CO_2) on a 100-year basis;

WHEREAS, California consumers purchased approximately 1.92 million small containers of automotive refrigerant a year prior to the adoption of the regulation and approximately 1.1 million small containers of automotive refrigerant per year between the years 2011 to 2014, resulting in a reduction in sales of approximately 40 percent;

WHEREAS, staff determined the recycle rate of used containers from records submitted by retailers to be approximately 70 percent based on annual reports between the years 2011 and 2014 inclusive;

WHEREAS, staff initially anticipated that returned used containers would contain approximately 20 percent of HFC-134a refrigerant, however, data from annual reports and testing now indicate that returned used containers contain approximately 2 to 4 percent of the HFC-134a refrigerant that was in the container at time of sale;

WHEREAS, information obtained from the implementation of the regulation indicates that the self-sealing valve may be responsible for the majority of the emission reductions associated from the regulation and may have caused used container return rates to range from 65 to 77 percent;

WHEREAS, return rates from fee deposit programs for beverage containers range from 50 to 80 percent;

WHEREAS, in developing proposed amendments to the Regulation for Small Containers of Automotive Refrigerant, staff conducted one public workshop, one workgroup meeting, and held stakeholder meetings to discuss issues and review amendment proposals;

WHEREAS, staff prepared a staff report entitled "Initial Statement of Reasons (ISOR) for Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant" which presents the rationale for the proposed amendments;

WHEREAS, staff proposed amendments to the Small Containers of Automotive Refrigerant Regulation, Title 17 California Code of Regulations, sections 95362, 95364, 95366, 95367, and 95369, and proposed adoption of new sections 95364.1 and 95367.1, as set forth in Appendix A to the ISOR released to the public on March 1, 2016;

WHEREAS, in response to public comments received on the proposed amendments released on March 1, 2016, staff has proposed modifications to the proposed amendments that change Title 17 California Code of Regulations sections 95364.1, 95366, 95367.1, and Section 2.3 of the incorporated "Certification Procedures for Small Containers of Automotive Refrigerant," as set forth in Attachment C to this Resolution;

WHEREAS, staff proposes to eliminate the provision for adjusting the refundable deposit, which would be fixed at $10, since the adjustable provision is no longer needed given that the self-sealing valve is anticipated to achieve most of the emissions reductions associated with the regulation;

WHEREAS, the intent of the container deposit and return program was to direct all unclaimed deposits retained by the manufacturers, distributors, and retailers to a manufacturer-managed account used to fund enhanced education programs for the benefit of consumers;

WHEREAS, retailers have been retaining unclaimed consumer deposits with an estimated accrual of over $18 million as of January 2016, and do not believe the existing regulation requires them to forward these funds to manufacturers;

WHEREAS, staff is proposing amendments to the regulation to clarify the existing requirement that retailers must transfer unclaimed consumer-retailer container deposits to the manufacturers for enhancing the consumer education program;

WHEREAS, staff is proposing amendments to the regulation to allow manufacturers to spend the unclaimed deposits on other programs, projects, and measures reducing GHG emissions as approved by ARB;

WHEREAS, staff is proposing amendments to the container labeling requirements set forth in the incorporated "Certification Procedures for Small Containers of Automotive Refrigerant" that would help DIYers reduce refrigerant losses by instructing them not to vent the contents of the product container and directing them to either charge the refrigerant into motor vehicle air conditioning systems or return the containers for recycling of the residual refrigerant;

WHEREAS, staff originally proposed to establish a sell-through requirement to prevent the sale of containers without the modified labeling beginning one year from the effective date of the amendments, but now proposes instead to prohibit the sale in California of containers without the modified labeling that are manufactured more than one year after the effective date of the amendments;

WHEREAS, the Board routinely adopts certification and test procedures in tandem with regulations to alert parties of the manner in which ARB will determine compliance with technical requirements;

WHEREAS, staff further proposes that the Board therefore adopt amendments to the "Certification Procedures for Small Containers of Automotive Refrigerant," as set forth in Appendix B to the Initial Statement of Reasons released to the public on March 1, 2016;

WHEREAS, ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, title 14, section15251, sub. (d)), and ARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007);

WHEREAS, staff has determined that the proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) ("common sense" exemption) because the record evidence shows with certainty that there is no possibility that the proposed amendments may result in a significant adverse impact on the environment, as described in Chapter III of the Staff Report;

WHEREAS, a public hearing and other administrative proceedings have been held according to the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board finds that:

DIYers recharge their motor vehicle air conditioning (MVAC) systems by purchasing and using HFC-134a refrigerant in small containers that hold between 2 ounces and 2 pounds of refrigerant by weight;

HFC-134a is a hydrofluorocarbon that is and has been the predominant refrigerant used in MVAC systems manufactured since 1995;

HFC-134a is a potent GHG that has a global warming impact 1,300 times greater than CO_2 on a 100-year basis;

California consumers purchased approximately 1.92 million small containers of automotive refrigerant per year prior to the adoption of the regulation and approximately 1.1 million small containers of automotive refrigerant between 2011 to 2014, a reduction in sales of approximately 40 percent;

The recycle rate of used containers between 2011 to 2014 was approximately 70 percent;

Returned used containers contain approximately 2 to 4 percent of the HFC-134a refrigerant that was in the containers when sold;

The self-sealing valve requirement appears to be responsible for the majority of the emission reductions associated from the regulation and also appears to have contributed to used container return rates of 65 to 77 percent;

The container return program's contribution to emission reductions is much lower than initially anticipated, and because the self-sealing valve requirement appears to provide the majority of the emission reductions from the regulation, the approximate 70 percent return rate of used containers is satisfactory and accordingly the existing provision regarding adjustable deposits and target return rates is no longer needed; therefore the refundable deposit is proposed to be set at $10 per container;

The existing regulation required and intended that retailers must transfer unclaimed consumer-retailer deposits to the manufacturers, and that manufacturers expend those funds as well as unclaimed manufacturer-retailer and manufacturer-distributor deposits on enhanced education programs to benefit consumers;

Retailers have retained unclaimed consumer deposits with an estimated accrual of over $18 million;

The proposed amendments would clarify the existing requirement that retailers must transfer unclaimed consumer-retailer container deposits to the manufacturers who would in turn expend such deposits to fund consumer education programs;

The proposed amendments would establish new reporting requirements for retailers to ensure that retailers comply with this provision.

The proposed amendments would allow manufacturers to spend the unclaimed consumer deposits, and unclaimed manufacturer-retailer and unclaimed manufacturer-distributor deposits, on other programs, projects, and measures reducing greenhouse gas emissions, as approved by ARB;

The proposed amendments to the "Certification Procedures for Small Containers of Automotive Refrigerant" would reduce refrigerant losses by instructing consumers not to vent the contents of the product container and directing them to either charge the refrigerant into motor vehicle air conditioning systems or return the containers for recycling of the residual refrigerant;

The proposed amendments, including the proposed modification in Attachment C, would allow retailers to sell containers without the new labeling that are manufactured up to one year after the effective date of the amendments;

The reporting requirements of the proposed amendments that apply to businesses are necessary for the health, safety, and welfare of the people of the State;

The proposed amendments meet the statutory requirements identified in sections 38501, 38510, 38560, 38560.5, 38580, 39600 and 39610 of the Health and Safety Code;

The proposed amendments were developed in an open public process, in consultation with affected parties, through a public workshop, numerous workgroup and individual meetings with stakeholders and these efforts are expected to continue;

No reasonable alternatives to the amendments considered to date, or that have otherwise been identified and brought to the attention of ARB, would be more effective at carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected entities than the proposed regulation;

The proposed amendments are consistent with ARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The proposed amendments are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) because substantial evidence in the record shows with certainty that there is no possibility that the proposal may result in a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption amendments to sections 95362, 95364, 95366, 95367, and 95369, and the adoption of new sections 95364.1 and 95367.1, as set forth in Appendix A to the ISOR released March 1, 2016, and amendments to the incorporated "Certification Procedures for Small Containers of Automotive Refrigerant," as set forth in Appendix B to the ISOR released March 1, 2016, with the modifications shown in Attachment C to this Resolution.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make the modified regulatory language in Attachment C, and any additional conforming modifications that are appropriate, available for public comment, with any additional supporting documents and information, for a period of at least 15 days. The Executive Officer shall 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. The Executive Officer may present the amendments to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the amendments after addressing all appropriate conforming modifications.

BE IT FURTHER RESOLVED that if any modifications to the amendments made available for one or more 15 day public comment periods affect the conclusion that the amendments are exempt from CEQA, the Executive Officer shall prepare and circulate any additional environmental analysis to the extent required by ARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and if required, prepare written responses to any comments raising significant environmental issues to present to the Board along with the final regulation order.

I hereby certify that the above is a true and correct copy of Resolution 16-4 as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

Resolution 16-5

April 22, 2016

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant, Title 17, California Code of Regulations, sections 95362, 95364, 95366, 95367, and 95369, and adoption of new sections 95364.1 and 95367.1, as set forth in Appendix A to the Initial Statement of Reasons, released March 1, 2016.

Attachment B: Proposed Amendments to the Certification Procedures for Small Containers of Automotive Refrigerant, section 2.3, as set forth in Appendix B to the Initial Statement of Reasons, released March 1, 2016.

Attachment C: Staff's Suggested Modifications to the Original Proposal (Distributed at the April 22, 2016 ARB hearing)

ATTACHMENT C

Staff's Suggested Modifications to the Proposed Amendments to the Small Containers of Automotive Refrigerant Regulation (Distributed at the April 22, 2016 Board hearing)

This attachment shows the modifications to the originally proposed regulatory language. The originally proposed regulatory language is shown in underline to indicate additions to the existing regulation and ~~strikeout~~ to indicate deletions. The suggested modifications to the originally proposed regulatory language are shown in double underline to indicate additions and ~~double strikeout~~ to indicate deletions.

Shown below are only those portions of the originally proposed regulation that would be modified by staff's suggested revisions. Additional changes are also described and modified regulatory language will be developed by staff as described, and the modified language will be made available to the public for a 15-day comment period prior to final adoption.

The Small Containers of Automotive Refrigerant Regulation

Amend section 95364.1, title 17, California Code of Regulation (CCR), to read as follows:

§ 95364.1 ~~Sell-Through~~ Manufacturing of Products with Modified Labels.

~~(a)~~ Any small container of automotive refrigerant manufactured more than one year after (the effective date of the regulatory amendment) without the new labeling requirements specified in Certification Procedures 2.3 (B)(5) cannot be sold in California. This date is determined by the manufacturing date printed on each can of automotive refrigerant. ~~Automotive refrigerant in a small container that was packaged or manufactured between January 1, 2010 and (the effective date of the regulatory amendment) may be sold, supplied, or offered for sale in California until one year from (the effective date of the regulatory amendment).~~

~~(b) Notification necessary for products sold during the sell-through period. A person who sells or supplies automotive refrigerant in a small container that does not fully comply with the provisions of section 95362 must notify the purchaser in writing of the date on which the sell-through period will end. This notification must be supplied only if all of the following conditions are met:~~

~~(1) The product is being sold or supplied to a distributor or retailer; and~~

~~(2) The sell-through period for the product will expire 6 months or less from the date the product is sold or supplied.~~

~~(c) Any small container of automotive refrigerant manufactured between January 1, 2010 and (the effective date of the regulatory amendment) that is not sold by one year from (the effective date of the regulatory amendment) must be recalled by the manufacturer. A manufacturer must report the total number of small containers of automotive refrigerant that are recalled in the reports required by section 95367.~~

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600 and 39601, Health and Safety Code.

Amend section 95366, title 17, California Code of Regulation (CCR), to read as follows:

§ 95366 Container Deposit and Return Program Requirement.

(a) (4) All deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3) within 90 calendar days of sale must be transferred to the manufacturer or its designee. Unclaimed deposits held by retailers during January – June ~~March~~ will be due August ~~May~~ 1st; unclaimed deposits held by retailers during July ~~April – June will be due August 1st, unclaimed deposits held by retailers during July – September will be due November 1st, and unclaimed deposits held by retailers during October~~ – December will be due February 1st of the following calendar year.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600 and 39601, Health and Safety Code.

Amend section 95367.1, title 17, California Code of Regulation (CCR), to read as follows:

(b) Each ~~quarterly~~ semi-annual report will be due subject to the following schedule: Reports for January – ~~March~~ June will be due ~~May~~ August 1st; reports for July ~~April – June~~ December will be due ~~August, reports for July – September will be due November 1st, and reports for October – December will be due~~ February 1st of the following calendar year.

Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600 and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600 and 39601, Health and Safety Code.

Amend section 2.3 of the Certification Procedures for Small Containers of Automotive Refrigerant, to read as follows:

(B) Each small container must clearly display the following items:

~~(5)The following statement in English and Spanish: "If container has refrigerant remaining after usage, return to retailer or retain for additional use until empty". This must be at least 7 point font for English and 6 point font for Spanish.~~