

State of California
AIR RESOURCES BOARD

**PROPOSED AMENDMENTS TO THE REGULATION FOR SMALL
CONTAINERS OF AUTOMOTIVE REFRIGERANT**

STAFF REPORT: INITIAL STATEMENT OF REASONS

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ABBREVIATIONS AND ACRONYMS

AB 32	Assembly Bill 32, California Global Warming Solutions Act of 2006
AC	air conditioning
ARB	Air Resources Board
CEQA	California Environmental Quality Act
CO ₂	carbon dioxide
DIY	do-it-yourself
GHG	greenhouse gas
GWP	global warming potential
HFC	hydrofluorocarbon
IPCC	Intergovernmental Panel on Climate Change
MMTCO ₂ E	million metric tons of carbon dioxide equivalents
MVAC	motor vehicle air conditioning
SKU	Stock Keeping Unit
U.S. EPA	United States Environmental Protection Agency

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EXECUTIVE SUMMARY

The staff of the Air Resources Board (ARB or Board) is proposing to amend the Regulation for Small Containers of Automotive Refrigerant (hereinafter “regulation”) in order to clarify an existing requirement that the retailers of this product must transfer the unclaimed consumer-retailer container deposits to the manufacturers, to expand the scope of how this money is spent, to eliminate the provision for adjusting the consumer-retailer deposit, which will be fixed at \$10, and to require additional language on the label.

The regulation was initially adopted by the Board in January 2009 and included a new manufacturer-administered deposit, return, and recycling program. The regulation requires retailers to collect a refundable \$10 deposit, at the time of sale, from a consumer for each small container of automotive refrigerant purchased. After using the refrigerant, the consumer returns the used container with its receipt to the retailer within 90 days of purchase to receive a full refund of the deposit. The regulation also requires that the manufacturer collect a deposit for each small container of automotive refrigerant that it sells to product distributors or retailers, but it does not specify the amount of that manufacturer-retailer or manufacturer-distributor deposit.

Both retailers and manufacturers must transfer unclaimed container deposits to a manufacturer-managed account which is used to reduce greenhouse gas (GHG) emissions through enhanced consumer education and outreach programs. It has come to ARB’s attention that retailers have been retaining unclaimed consumer deposits instead of transferring the funds to the manufacturers. The ARB staff is therefore proposing amendments to clarify the existing requirement that retailers must transfer the unclaimed consumer deposits they collect from the consumer to the manufacturers, and to establish new quarterly recordkeeping and reporting requirements which ensure the retailers’ compliance with this provision. In addition, because the amount of the unclaimed container deposit money is substantial, the ARB is proposing to expand the scope of the regulation to allow the manufacturers to spend the funds on other greenhouse gas reduction programs, projects, or measures, as directed by ARB, in addition to the enhanced education programs presently specified in the regulation.

The initially adopted regulation included provisions for adjusting the consumer-retailer deposit, which was initially set at \$10. The deposit amount would increase or decrease in \$5 amounts based on the return rate of the used containers. During the implementation of the regulation, the used container return rate has consistently ranged from 65 to 77% since 2011, and it appears that a 95% benchmark may be difficult to achieve. This is because the self-sealing valve may cause consumers to retain partially filled containers after the initial usage and to use the remaining refrigerant in performing additional air conditioning re-charges. This benefit to consumers would result in lower-than-expected return rates as well as less residual refrigerant remaining in the product containers. Since actual data indicates that the deposit of \$10 has achieved a satisfactory return rate of approximately 70%, the

deposit adjustment feature is no longer needed and the consumer-retailer deposit amount is proposed to be fixed at \$10.

The amendments also include changes to the Certification Procedures to reflect the \$10 fixed refundable deposit and to require additional language on the container labels to forbid the venting of the refrigerant and encourage consumers to either return the product after usage or retain and use it until the container is empty. Due to the changes to the container labels, the amendments will allow a one-year sell-through period so that the existing stock of product can be depleted prior to the introduction of the products with the modified labels.

The Staff Report describes the proposed amendments and the rationale for each amendment. It also presents staff's analysis of impacts associated with the implementation of the proposed amendments, including costs, and economic and environmental impacts. The text of the regulatory amendment is set forth in Appendix A and of the amended Certification Procedures in Appendix B.

I. INTRODUCTION AND BACKGROUND

In January 2009, the Air Resources Board (ARB or Board) approved for adoption a regulation to reduce greenhouse gas (GHG) emissions associated with do-it-yourself (DIY) recharging of automotive air conditioning systems. (Title 17, California Code of Regulations (CCR) § 95360 et seq., hereinafter “regulation”) (CCR, 2010). The regulation established requirements applicable to containers that hold between 2 ounces and 2 pounds of any automotive refrigerant with a global warming potential (GWP) greater than 150, and became effective under state law on March 10, 2010. Global warming potential is the relative warming of a greenhouse gas over a specified period of time as compared to carbon dioxide (GWP of 1). GWP allows for the conversion of different greenhouse gas emissions into the same emissions unit, carbon dioxide equivalents.

HFC-134a is a hydrofluorocarbon (HFC) that is, and has been, the predominant refrigerant used in motor vehicle air conditioning (MVAC) systems manufactured since 1995. HFC-134a is not an ozone-depleting substance, but is a potent greenhouse gas (GHG) that has a global warming impact 1,300 times greater than carbon dioxide (CO₂) (IPCC, 2007). A single 12-ounce container of this refrigerant is equivalent to 1,000 pounds of CO₂, or roughly the carbon dioxide emissions emitted from an automobile burning 50 gallons of gasoline. New lower-GWP refrigerants are being introduced into new vehicles, but for the foreseeable future HFC-134a will remain in widespread use in MVACs.

The regulation is comprised of three main provisions: requirements for small containers of refrigerant to be equipped with self-sealing valves and labels containing information to promote consumer education of proper MVAC charging practices and to prevent misuse of refrigerant; a comprehensive consumer education and outreach program; and a manufacturer-administered deposit, return, and recycling program. The self-sealing valve and labelling requirements were established to limit the venting of automotive refrigerant to the atmosphere that was associated with the then-current container designs. Manufacturers of small containers of automotive refrigerant must submit an application to ARB to certify their products for sale in California and must also submit information and data demonstrating compliance with each of these components of the regulation.

The regulation requires retailers to collect a \$10 deposit, at the time of sale, from a consumer for each small container of automotive refrigerant purchased. After using the refrigerant, the consumer returns the used container with its receipt to the retailer within 90 days of purchase to receive a full refund of the deposit. The regulation provides retailers the discretion of refunding consumers the \$10 deposit even if more than 90 days have elapsed or the consumer does not have a receipt. Finally, the retailers accumulate the returned small containers and transfer them to the manufacturers, who must then recover any refrigerant remaining in the used containers. The regulation also requires that manufacturers collect a deposit for each small container of automotive

refrigerant that they sell to product distributors or retailers, but does not specify the amount of that manufacturer-retailer or manufacturer-distributor deposit.

Both unclaimed consumer-retailer deposits and unclaimed manufacturer-retailer and manufacturer-distributor deposits must be spent on enhanced education and outreach programs designed to inform consumers of measures to reduce GHG emissions associated with do-it-yourself recharging of MVAC systems. Consequently, retailers must transfer the unclaimed consumer-retailer container deposits to the manufacturers who must in turn expend such funds along with any unclaimed manufacturer-retailer or manufacturer-distributor funds, to reduce GHG emissions through enhanced consumer education and outreach programs. These unclaimed deposits are utilized to benefit the consumer through website support, development of educational materials, and training and outreach to the consumer via the retailer.

It has come to ARB's attention that retailers have been retaining unclaimed consumer-retailer deposits instead of transferring them to manufacturers as required (Appendix C). The ARB staff is therefore proposing amendments to clarify the existing requirement that retailers must transfer any unclaimed consumer-retailer deposits to the manufacturers, and to establish new quarterly reporting requirements for retailers to ensure that retailers comply with this provision.

Provisions in the existing regulation allow the deposit to be increased if the 95% biennial return rate is not achieved. The increasing consumer-retailer deposit was intended to provide added incentive for the consumers to return the containers to the retailers for the refundable deposit. The returned containers are then transferred to refrigerant recovery facilities where the refrigerant remaining in the containers is recovered and recycled. When ARB staff proposed the initial regulation, it anticipated that approximately 95% of return rate could be achieved (ARB, 2008) and 20% of each container's refrigerant volume could be recycled from the used container (ARB, 2008), which comprised the majority of the estimated emission reductions for the initial regulation.

During implementation, it became apparent that the remaining refrigerant was about 2% to 4% of the container volume, which is far below the originally anticipated amount of recovered refrigerant (20%). This was verified by ARB staff conducting the evacuation of used product containers returned to retailers (ARB, 2015). So the emission reduction from the container return program is significantly less than originally anticipated.

It appears that the self-sealing valves on all containers may be responsible for the majority of the emission reductions seen thus far. The valves have had an unintended consequence on the sales of the product as well as the amount of refrigerant remaining in the container after usage. Prior to the regulation, sales of this product were 1.92 million cans annually (ARB, 2007). After the regulation became effective under state law, annual sales have decreased to about 1.1 million containers (ARB, 2015) which is approximately 40% reduction. It should be noted that the sales decrease may be partly attributed to improved leak-resistance of MVAC systems.

With the self-sealing valve, it is probable that a high percentage of consumers are retaining partially filled containers for continued re-charging of MVACs until the containers are nearly empty. The self-sealing valve gives the consumers the ability to re-use the product container until the container is empty or nearly empty and may result in the consumers keeping the product beyond the 90-day return period. In the interest of customer service, retailers have used the regulation's discretionary clause to return the refundable deposits to consumers returning the containers after the 90 days. This has contributed to the low remaining refrigerant, the relatively low return rate of approximately 70%, and the reduced annual sales of the product. Thus, the container return program's contribution to emission reductions is much lower than initially believed and the self-sealing valve accounts for the majority of the emission reductions.

Based on the data collected from the annual reports provided by the retailers from 2011-2014 the container return rate was estimated to be in the range of 65% to 77% (Appendix D) with a fixed \$10 refundable deposit. This is considered satisfactory since beverage containers with refundable deposits have similar recycling rates ranging from 50% to 80% (CRI, 2013). Since the self-sealing valve requirement provides the vast majority of the emission reductions, and the approximately 70% return rate is considered satisfactory for a container recycling program, the adjustable deposit feature including the target return rates is no longer needed and the refundable deposit is proposed to be set at \$10 per container.

Because used container returns have been lower than expected, unclaimed consumer-retailer deposits are estimated to be larger than initially anticipated (Appendix C). The current regulation specifies that manufacturers must expend unclaimed consumer-retailer and unclaimed manufacturer-retailer and manufacturer-distributor funds on enhanced educational programs designed to inform consumers of measures to reduce greenhouse gas emissions associated with DIY recharging of MVAC systems, which may unduly restrict the scope of projects and programs proposed by manufacturers. Therefore, it is proposed to allow the manufacturers greater leeway in spending the funds on projects or programs for reducing greenhouse gases in addition to the enhanced education programs specified in the regulation. These new programs would require the approval of the ARB, and could include, for example, programs related to the improved recycling or disposal of old refrigerants, and research, evaluation, and promotion of lower GWP refrigerants.

The amendments also include changes to the Certification Procedures, requiring additional language on the container labels that forbid the venting of the refrigerant and encouraging consumers to either return the product after usage or retain and use it until the container is empty. Recent survey results indicate that 35% of respondents emptied the can before it was returned (ARB, 2015). Informing consumers not to vent refrigerant will help limit the GHG emissions from small containers of automotive refrigerant. Informing consumers of the regulation's provisions to either return used product to retailers or to retain and use containers until they are empty will also limit GHG emissions from small containers. Used returned containers must be transferred to manufacturers who must recover remaining refrigerant in the cans, and consumers

using containers until they are empty will also not release refrigerant into the atmosphere. The amended Certification Procedures also provide a one-year sell-through period so that the existing stock of product can be depleted prior to the introduction of the product with the modified labels.

The Staff Report describes the proposed amendments and the rationale for each amendment. It also presents staff's analysis of impacts associated with the implementation of the proposed amendments, including costs, and economic and environmental impacts. The text of the regulatory amendment is set forth in Appendix A and of the amended Certification Procedures in Appendix B.

II. STATEMENT OF REASONS

A. DESCRIPTION OF PROBLEM PROPOSAL IS INTENDED TO ADDRESS

As previously described in Section I, it has come to ARB's attention that retailers have been retaining unclaimed consumer deposits instead of transferring them to manufacturers. Although retailers disagree that they are required to transfer unclaimed consumer deposits to manufacturers, the rulemaking record for the initial regulation evidences the Board's intent to require that all unclaimed consumer deposits accrued by retailers be transferred to manufacturers to enhance educational and outreach programs (ARB, 2008; ARB, 2009a; ARB, 2009b). In addition, because of the size of the unclaimed deposits, this amendment proposes to provide manufacturers the flexibility to fund a wider range of programs and projects related to the reduction of greenhouse gases, in addition to the existing enhanced education programs related to reducing greenhouse gases associated with DIY recharging of MVAC systems.

Finally, the self-sealing valve requirement has resulted in relatively low container return rates as well as minimal residual refrigerant. This provision of the regulation has essentially negated the emission reductions attributable to the container deposit and return program. Since recent field data indicate the deposit of \$10 has achieved a satisfactory return rate of approximately 70%, the adjustable deposit feature of this program is no longer needed.

B. SUMMARY AND RATIONALE FOR EACH REGULATORY PROVISION

Staff's purpose in amending the regulation is to explicitly clarify the existing requirement that unclaimed consumer deposits that are retained by retailers must be transferred to the manufacturers for the benefit of the consumers, to allow manufacturers to spend these funds on a wider range of programs or projects other than the enhanced education programs in reducing greenhouse gas emissions, and to eliminate the procedure for adjusting the refundable deposit which will be fixed at \$10. Appendix A shows the proposed changes to the regulation with strikethrough and underlining.

Section 95362, Certification Procedures for Small Containers of Automotive Refrigerant, was modified for this amendment.

Subsection 95362(b) was modified by establishing criteria for products certified between January 1, 2010 and the effective date of this amendment. These criteria are set forth in the existing Certification Procedures for Small Containers of Automotive Refrigerant.

Subsection 95362(c) was added which establishes new criteria for product certification after the certification procedures are amended to incorporate additional product container labeling described in the changes to the certification procedures described below.

Section 95364.1, Sell-Through of Products With Modified Labels; was added and establishes a one-year period after the amendments become effective, during which 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 6 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.

Section 95366, Container Deposit and Return Program, was modified for this amendment.

Subsection 95366(a)(2) was altered to set the refundable consumer deposit at a fixed amount of \$10.

Subsection 95366(a)(4) was added to explicitly clarify the existing 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.

Subsection 95366(b)(5) was modified to clarify that manufacturers are required to place the unclaimed deposits from retailers into an account that is to be used on enhanced education programs for the benefit of the consumers.

Subsection 95366(b)(6) was modified to expand the scope for the usage of these funds by including other programs or projects for reducing greenhouse gas emissions. This modification is proposed because of the substantial amount of unclaimed container deposit money that has accumulated during the implementation of the regulation (Appendix C). The relatively low return rate of the used containers is the reason for the larger sums of money. Based on the retailers' annual reports, the estimated return rates are in the range of 65% to 77% instead of the 95% target return rate specified in

the regulation (Appendix D). These funds will allow the manufacturers to undertake larger projects of greater scope than those that are allowed in the present regulation. Section 95367, Recycling Reporting Requirements, was modified for this amendment.

Subsections 95367(c) thru (g), are removed, eliminating the process for adjusting the deposit since it is no longer needed. The setting of a fixed deposit amount and the elimination of the deposit adjustment language is due to effectiveness of the self-sealing valve requirement. During the implementation of the regulation, it has been apparent that consumers are electing to retain the small containers to use any remaining refrigerant that is stored because of the self-sealing valve instead of returning the containers to retailers to receive the \$10 deposit. This low container return rate is reflected in the low amount of refrigerant remaining in the used containers that have been evacuated and contributes to the relatively low return rate observed by ARB staff (Appendix D).

The container recycling program was originally intended to address emissions of automotive refrigerant because ARB anticipated that significantly more refrigerant would be stored and consequently recaptured from returned containers. The purpose of adjusting the deposit amount was to provide an incentive to the manufacturers to maintain a high return rate. If the return rate was below 95%, the deposit would increase by \$5 increasing the upfront price that the consumer would pay which would incentivize consumers to return more containers. The containers are sent to the manufacturers' refrigerant recovery facilities where the refrigerant would be recycled instead of emitted to the atmosphere. Since the recovered refrigerant is minimal, the deposit adjustment feature is being eliminated.

Section 95367.1 was added to establish new quarterly reporting requirements which ensure the retailers' compliance with this provision.

Section 95369, Recordkeeping Requirements, was also modified for this amendment.

Subsection 95369(b) was added to require the retailers to maintain records on a quarterly basis. These records would include the unclaimed container deposits retained by the retailers and the amount of this money that is transferred to the manufacturers. This would enable ARB staff to ensure that retailers are complying with the requirement of transferring the unclaimed container deposit to the manufacturers.

In addition, the certification Procedures for Small Containers of Automotive Refrigerant was modified for this amendment.

Section 2.3(B)(1) and (3) set the amount of the refundable deposit at "\$10" which will replace the "\$XX" in those subsections.

Section 2.3(B)(4) requires that certified product labels now include language (in both English and Spanish) informing consumers not to vent the refrigerant to the atmosphere. This requirement was added to limit GHG emissions from small containers

of automotive refrigerant by notifying consumers not to vent such refrigerant to the atmosphere.

Section 2.3(B)(5) requires certified labels now include language (in both English and Spanish) advising consumers to either return the product to the retailer after usage or retain the product until it is empty. This requirement recognizes that many consumers are retaining the products for additional re-charges after the initial use. This requirement will limit GHG emissions from small containers because the regulation specifies that used returned containers will be transferred to manufacturers who must recover remaining refrigerant in the cans, and consumers using containers until they are empty will also not release refrigerant into the atmosphere. See Appendix B.

III. ENVIRONMENTAL ANALYSIS

A. Introduction

This chapter provides the basis for ARB's determination that the proposed amendment is exempt from the requirements of California Environmental Quality Act (CEQA). ARB's regulatory program, which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans for the protection and enhancement of the State's ambient air quality, has been certified by the California Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (14 CCR 15251(d)). Public agencies with certified regulatory programs are exempt from certain CEQA requirements, including but not limited to, preparing environmental impact reports, negative declarations, and initial studies. ARB, as a lead agency, prepares a substitute environmental document (referred to as an "Environmental Analysis" or "EA") as part of the Staff Report prepared for a proposed action to comply with CEQA (17 CCR 60000-60008). If the amendment is finalized, a Notice of Exemption will be filed with the Office of the Secretary for the Natural Resources Agency and the State Clearinghouse for public inspection.

B. Analysis

ARB has determined that the proposed amendment is exempt from CEQA under the "general rule" or "common sense" exemption (14 CCR 15061(b)(3)). The common sense exemption states a project is exempt from CEQA if "the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The proposed amendments make changes to align the regulation with its original intent. Specifically, the unclaimed container deposit money is to be used for the benefit of the product consumers in enhanced education programs administered by the manufacturers. The transfer of these funds from the retailers to the manufacturers under the regulation has no potential to adversely affect air quality or any other environmental resource area. The same can be said for the proposal to fix the adjustable refundable deposit at \$10. Finally, increasing the scope of the programs for

the unclaimed container deposit funds may result in significant greenhouse gas emission reductions. Based on ARB's review it can be seen with certainty that there is no possibility that the proposed may result in a significant adverse impact on the environment; therefore, this activity is exempt from CEQA.

IV. ENVIRONMENTAL JUSTICE

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. ARB is committed to making environmental justice an integral part of its activities. The Board approved its Environmental Justice Policies and Actions (Policies) on December 13, 2001, to establish a framework for incorporating environmental justice into ARB's programs consistent with the directives of state law (ARB, 2001). These policies apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low-income and minority communities.

The present regulation was set up as an alternative to simply banning the sale of this product because of concerns that many people who use this product are either low-income or minorities. Consumers with older vehicles that need to recharge the air conditioner may not be in a position to hire professionals. This product gives them the ability to perform the re-charge at a reasonable cost. During the implementation, it became apparent that a relatively large sum of money was accumulating with the retailers in the form of the unclaimed container deposits (Appendix C). It was the intent of the regulation for this money to fund enhanced education programs administered by the manufacturers for the benefit of the DIY consumer. This amendment will significantly improve that situation and allow the enhanced education programs to be properly funded for the benefit of DIY consumers including the low-income and minority communities. In addition, providing additional ways to spend this money may also result in Environmental Justice benefits for disadvantaged and minority communities in the form of reduced greenhouse gas emissions. The fixing of the refundable deposit at \$10 should not negatively impact these communities. Finally, the estimated price impact attributable to the additional language on the containers is minimal.

V. ECONOMIC IMPACTS

1. Summary

Because under the existing small container automotive refrigerant regulation small container automotive refrigerant retailers are required to report the number of units sold and recycled to the ARB on an annual basis, much of the programming infrastructure and cost has previously been undertaken to comply with the existing rule. This amendment will require a slight change to what is already undertaken; added provisions would require quarterly recordkeeping and reporting and require that funds representing

the unclaimed deposits be sent to the manufacturers quarterly. The other changes will not result in additional costs for California businesses. As such, there is no anticipated additional cost to change from annual compilation, reporting, and fund transfer to quarterly.

2. The Regulatory Costs and Benefits

a. Direct Cost Assessment

The cost of the proposed amendment is based on the incremental annual cost increase that retailers (at the corporate level) will incur for recordkeeping and reporting of quarterly data of unclaimed deposits and the cost to transfer unclaimed deposit money to automotive can refrigerant manufacturers quarterly. Under the current regulation, retailers are required to compile and report sales and recycling data on an annual basis and to transfer unclaimed deposits to manufacturers. The amendment requires the continued annual compilation and reporting but with addition of quarterly recordkeeping and reporting for the unclaimed container deposit funds. The amendment also requires the retailers to transfer the unclaimed deposits on a quarterly basis.

The overwhelming majority (more than 95%) of small container automotive refrigerant is sold by nine retailers in California. The remaining 23 retailers account for less than 5% of the product sold in the State.

Because under the existing regulation, small container automotive refrigerant automotive retailers are required to report sales and recycled units to the ARB on an annual basis, the programming infrastructure and associated cost has previously been undertaken to comply with the existing rule. This amendment will require a duplicate of what is already undertaken; with the provision that quarterly records be kept and that funds representing the unclaimed can deposits are sent to the product manufacturers on a quarterly basis. As such, there is no anticipated additional cost to change from annual compilation, reporting and fund transfer to quarterly.

The regulation requires a small change to the labeling requirements which will cost the three manufacturers a one-time design and set up estimated cost of \$204,000. However, as the three container manufacturers are not located in California, statewide total cost is zero and the cost to California business is zero. Assuming the cost of the additional labeling is passed to California consumers, the price of small container automotive refrigerant cans will increase by \$0.04.

b. Direct Benefits Assessment

The proposed regulatory amendments do not provide any direct GHG emissions reduction benefits beyond those achieved by the existing regulation. Benefits do include providing unclaimed small container automotive refrigerant deposits to small container automotive refrigerant manufacturers who will enhance outreach to customers to better foster use and recycling of container refrigerant or fund other programs to

reduce GHG emissions. This will be reinforced by the additional language that will be included on the label as a result of the amendment to the Certification Procedures.

c. Cost-effectiveness

The proposed regulatory amendments do not allow for a cost-effectiveness calculation, since there is no direct quantifiable reduction of GHG emissions. The proposed regulatory amendments will, however, contribute towards attainment of the GHG emission reduction goal by improving the outreach to HFC small container consumers on the use and recycling and disposal.

d. Affected Businesses (CA)

The proposed regulatory amendments are not likely to affect the creation, expansion, or elimination of any California businesses as the anticipated cost impact to a large and to a small business (retailers) is zero. The cost impact to a large and to a small business (retailers) is zero. California small can refrigerant retailers will be unaffected because it has been estimated that the proposed amendment will have an insignificant effect on the price of an individual container.

3. Economic Impacts Analysis

a. Impact on Jobs

Because of no cost to a firm (both large and small retailers) the proposed regulatory amendment will not create or eliminate current or future jobs within the State. As previously noted the proposed regulatory amendment will have a minimal impact on the price of an individual container and, thus, not have an impact on California retailers' sales.

b. Impact on Businesses

There is no expected impact on California businesses. More specifically, for the reasons presented above, this regulation will not create new businesses, or expand or eliminate existing businesses, within the State. The proposed regulatory amendments will have an insignificant impact on the price of individual containers, consequently, not impacting sales.

c. Impact on Small Businesses

There is no expected impact on California small businesses retailers as there are no anticipated costs to comply with the regulation, as such; the price (sales) of individual containers will increase by four cents.

d. Impact to Health and Welfare of California Residents

The proposed regulatory amendments do not directly reduce GHG emissions. The proposed regulatory amendments will, however, contribute towards attainment of the GHG emission reduction goal by improving the outreach to small container automotive refrigerant consumers on the use, recycling, and disposal of small container automotive refrigerant or funding other projects to reduce GHG emissions. As such, there are no direct impacts, either negative or positive, on health, or welfare to California residents, worker safety, and California's environment associated with the proposed regulatory amendments.

4. Information Relied upon for Economics Assessment

Information relied upon for this Economic Assessment includes: The number of small container automotive refrigerant sold in California was estimated by ARB staff from information provided to ARB from small container automotive refrigerant retailers, distributors, and manufacturers, pursuant to the existing container regulation.

5. Major Regulations

For purposes of this section, "Major Regulation" means any proposed adoption, amendment, or repeal of a regulation that will have an economic impact on the State's business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000), as estimated by the board, department, or office within the agency proposing to adopt the regulation. As previously shown in section 2.a, there is no anticipated additional cost of the proposed amendments in any one year of implementation or compliance, therefore the proposed regulatory amendments do not meet the major regulation threshold as specified in California Government Code section 11342.548.

Under California Health and Safety Code Section 57005, California Environmental Protection agencies are required to determine whether compliance costs are \$10 million in any one year and designate it as a major regulation under 57005. Because the costs for making this modification are less than \$10 million in any one year, the proposed amendment does not meet the major regulation threshold as specified in California Health and Safety Code Section 57005.

VI. EVALUATION OF REGULATORY ALTERNATIVES

California Government Code section 11346.2 requires ARB to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides reasons why these alternatives were not included in the proposal. ARB staff did not find any of the alternatives considered to be more effective in carrying out the purpose for

which the proposed regulatory action is proposed or to be as effective as or less burdensome to affected businesses than the proposal.

Alternative 1: No Change

The regulation would not be amended and would continue as is. This alternative was not included in the proposal because unclaimed deposits may continue to accumulate with the retailers, and the manufacturers' enhanced education program would not receive the funding for properly educating consumers about the product's use and handling which was the regulation's intent.

Alternative 2: ARB Manages the Outreach Program

The regulation would be amended so that the unclaimed container deposit money is sent to the ARB. ARB staff would use unclaimed deposit funds to develop, implement, and manage an outreach program to better inform consumers how to use, recycle, and dispose of small containers of automotive refrigerant. As with the proposed amendment, the unclaimed deposits would no longer accumulate to the benefit of the retailers. Additional ARB staff would be required for collecting and handling the money. There would also be additional work necessary to develop effective programs for the consumers. The annual cost to ARB to administer and implement the program is estimated to be approximately \$800,000. In addition, the manufacturers really have superior knowledge about the product and the means for reaching consumers through their knowledge of the industry.

VII. PUBLIC PROCESS FOR DEVELOPMENT OF PROPOSED ACTION

Staff held a public workshop in Sacramento, California on August 25, 2015 in which the transferring of the unclaimed container deposit money from the retailers to the consumer enhanced education account was discussed along with other matters. Attendees included representatives from Aerospace Communications, Auto Care Association, Automotive Refrigerant Products Institute, Carquest, IDQ, O'Reilly Auto Parts, Technical Chemical, TSI Products, and Walmart. The outcome of this meeting was that staff would work with the retailers in transferring the unclaimed container deposit money to the consumer enhanced education account administered by the manufacturers.

On September 22, 2015, a workgroup telephone meeting was held with the retail stakeholders. The issues discussed included the transferring of the unclaimed container deposit money from the retailers to the manufacturers. Representatives from the Auto Care Association and the retailers, however, were resistant to this proposal because they believed that the regulation did not require this.

Staff also interacted with stakeholders on an individual basis, particularly representatives from the manufacturers, retailers, the industry associations including the Auto Care Association and the Automotive Refrigerant Products Institute. In particular,

staff met with representatives from the Auto Care Association and a number of retailers from December 2015 to January 2016 to discuss this amendment which involves a proposed transferring of all funds from the unclaimed container deposits to the manufacturers' administered enhanced education programs.

Staff has also been meeting with representatives from U.S. EPA on a regular basis regarding developments in regulating automotive refrigerant and small containers of automotive refrigerant. At present, there is no existing federal regulation for small containers of automotive refrigerant, but U.S. EPA may be considering adopting federal regulations that are consistent with California's regulation and that are not expected to pose any impact on California's regulation and this proposed amendment.

VIII. REFERENCES

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Appendix A

Proposed Regulation Order

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PROPOSED REGULATIONS ORDER

**TITLE 17. PUBLIC HEALTH
DIVISION 3. AIR RESOURCES
SUBCHAPTER 10. CLIMATE CHANGE
ARTICLE 4. REGULATIONS TO ACHIEVE GREENHOUSE GAS EMISSION
REDUCTIONS
SUBARTICLE 5. SMALL CONTAINERS OF AUTOMOTIVE REFRIGERANT**

Amend Title 17, California Code of Regulations, sections 95362, 95364, 95366, 95367, and 95369, and proposed adoption to new sections 95364.1, and 95367.1 to read as follows:

NOTE: Set forth below are proposed amendments to title 17, of the California Code of Regulations. Amendments to existing sections proposed and subject to comment in this rulemaking are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.

§ 95362. Certification Procedures for Small Containers of Automotive Refrigerant.

(a) Except as provided in sections 95363 or 95364, on or after January 1, 2010, no person may sell, supply, offer for sale, or manufacture for sale in California automotive refrigerant in a small container unless that automotive refrigerant in a small container has been certified for use and sale by the Air Resources Board and is covered by an Executive Order issued pursuant to this subarticle.

(b) The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, for automotive refrigerant in a small container sold, supplied, offered for sale or manufactured for sale in California between January 1, 2010 and [day before effective date of amendment] are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant", adopted on July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein.

(c) The criteria for obtaining certification, including all procedures for determining compliance with applicable test procedures, for automotive refrigerant in a small container sold, supplied, offered for sale or manufactured for sale in California on or after [effective date of amendment] are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant", adopted on July 20, 2009, and last amended on [adoption date of amended procedure], which is incorporated by reference herein.

(ed) Any modification to the design or specifications of a small container of automotive

refrigerant that has been issued an Executive Order pursuant to these procedures must be disclosed to ARB before any modified small container of automotive refrigerant may be sold, supplied, offered for sale, or manufactured for sale in California. The Executive Officer will exercise good engineering judgment to determine if said change(s) constitute a significant difference to the design or specification of a previously certified small container of automotive refrigerant. If the Executive Officer determines that said change(s) constitute a significant difference to the design or specification of a previously certified small container of automotive refrigerant, the manufacturer must then request that the modified small container of automotive refrigerant be issued a new Executive Order pursuant to the provisions of this subarticle.

§ 95364. Sell-Through of Products.

(a) Notwithstanding the provisions of section 95362(a), automotive refrigerant in a small container that was packaged or manufactured before January 1, 2010 may be sold, supplied, or offered for sale in California until December 31, 2010.

(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 that is not sold by December 31, 2010 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.

§ 95364.1. Sell-Through of Products with Modified Labels

(a) 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.

§ 95366. Container Deposit and Return Program Requirement.

(a) Except for small containers of automotive refrigerant exempted under section 95363 or section 95364 of this subarticle, on or after January 1, 2010, and subject to the provisions of section 95367, a retailer of automotive refrigerant in a small container that is subject to the requirements of this subarticle must:

(1) Collect a deposit from the consumer or charge the consumer's account for each small container of automotive refrigerant at the time of sale.

(2) The amount of deposit on each small container is initially set at \$10, ~~and can be increased in \$5 increments as described in section 95367(d)(1) or decreased in \$5 decrements as described in section 95367(d)(2), but in no event shall the deposit amount of section 95366(a) be reduced below \$5.~~

(3) Return the deposit to the consumer, or credit the consumer's account when the consumer returns a used small container of automotive refrigerant to the retailer, provided that the consumer returns the used container of refrigerant to the retailer where purchased within 90 days of purchase, submits proof of purchase (e.g., cash register receipt), and provided that the container has not been breached. A retailer may return the deposit at his discretion if more than 90 days have elapsed, the consumer does not have a receipt, if the consumer returns the container to a location other than the place of purchase, or if the container has been breached.

(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 – March will be due May 1st; unclaimed deposits

held by retailers during 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.

(4)(5) Accumulate and store any used small container of automotive refrigerant for transfer to the manufacturer or its designee, and may segregate breached returned small containers from non-breached returned small containers. The manufacturer will, along with each participating retailer/distributor, identify or provide collection bins, totes or boxes that work in a complementary fashion within each retailer/distributors' current established distribution best practice for like merchandise, facilitating their ability to segregate breached small containers. Likewise, it will be the manufacturer's responsibility to identify each retailer/distributor's most complimentary manner of transport and return of returned small containers of automotive refrigerant to the recovery/recycle facilities.

(b) Except for small containers of automotive refrigerant exempted under section 95363 or section 95364 of this subarticle, on or after January 1, 2010, and subject to the provisions of section 95367, a manufacturer or its designated return agency must:

(1) Collect a deposit on each small container of automotive refrigerant at the time of sale to a distributor or retailer.

(2) Accept from a retailer or distributor used small containers of refrigerant certified under section 95362.

(3) Maintain a log of returned used containers by SKU, retailer, and return date.

(4) Refund to the retailer or distributor the full amount of the deposits collected under section 95366(b)(1) for all used small containers of automotive refrigerant certified under section 95362 that were returned. A manufacturer or designated return agency must count and record the number of small containers of automotive refrigerant that have been breached.

(5) Ensure that all deposits that are not returned or refunded by manufacturers to retailers and distributors in exchange for used small containers of automotive refrigerant under section 95366(b)(4) and all deposits collected by retailers that are transferred to manufacturers under section 95366(a)(4) will accrue to an account managed by the manufacturer to be used solely as described in section 95366(b)(6) for the purpose of enhancing the consumer education program or other programs, projects, and measures reducing greenhouse gas emissions as approved by the ARB. The manufacturer must report and account for how these account funds are spent in accordance with section 95367(a)(5) of this subarticle.

(6) Separately account for any funds attributable to unclaimed deposits, expend those funds only on enhanced educational programs or other programs, projects, and measures reducing greenhouse gas emissions approved by the Executive

Officer. The enhanced educational programs that are designed to inform consumers of measures to reduce GHG emissions associated with do-it-yourself recharging of MVAC systems, and The manufacturers are to provide to ARB an accounting of the collection and expenditures of these funds as described in section 95367(a)(5). Examples of enhanced education programs include, but are not limited to: improved Internet website support, development of additional educational materials, training and outreach to the consumer via retailers, and development and usage of videos and other means of demonstrations at retail sites. Examples of programs, projects and measures reducing greenhouse gas emissions include, but are not limited to improved recycling or disposal of old refrigerants, and research, evaluation, and promotion of low GWP refrigerants. A manufacturer must provide a description of any proposed enhanced educational programs in its application for certification of small containers of automotive refrigerant, and must obtain the Executive Officer's approval before it can expend funds attributable to unclaimed deposits on that enhanced educational program. For other programs or projects, a manufacturer must provide a description and obtain the Executive Officer's approval before it can expend funds attributable to unclaimed deposits.

(c) A manufacturer may designate an additional facility to receive and store returned used small containers of automotive refrigerant and to pay consumer refunds specified in section 95366(a) and (b) at the time a container is returned. Such a facility may be either a retail store or an entity that is not affiliated with a retail store.

(d) A manufacturer or its designee must coordinate the collection of used small containers of automotive refrigerant from retailers and any designated return agencies. To reduce the burden on the retailer, the manufacturer shall, along with each participating retailer/distributor, identify or provide collection bins, totes or boxes that work in a complementary fashion within each retailer/distributors' current established distribution best practice for like merchandise. Likewise, it shall be the manufacturer's responsibility to identify each retailer/distributor's most complementary manner of transporting returned small containers of automotive refrigerant to the recovery/recycle facilities.

(e) A manufacturer or its designee must recover any refrigerant remaining in the returned small containers at a facility registered with the ARB as described in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted on July 20, 2009, and last amended on January 5, 2010, which is incorporated by reference herein. The facility must employ good engineering practices to avoid loss of refrigerant to the atmosphere. The refrigerant must be recovered, recycled, reclaimed, or removed to a licensed waste disposal facility.

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.

§ 95367. Recycling Reporting Requirements.

(a) Reports to the Executive Officer are due March 1 every year starting March 1, 2011. Each annual report documents monthly data for small containers of automotive refrigerant sold and returned during the prior calendar year, January 1 through December 31. Reports must be submitted as follows:

(1) Upon request from ARB, each retailer must report sales data of the number of small containers of automotive refrigerant sold and the number of used small containers of automotive refrigerant returned by consumers. The sales data and returned can data must be reported for each SKU, for each manufacturer, distributor, for each month, and as totals for each reporting period. The data must be reported separately for the following categories: returned unused, returned for recycle, returned breached, to the extent that the retailer has segregated breached cans pursuant to section 95366(a)(4).

(2) Each distributor must report sales data of small containers of automotive refrigerant. The sales data must be reported for each SKU for each retailer, manufacturer, and for each month.

(3) Each manufacturer must report sales data of the number of small containers of automotive refrigerant sold to each retailer or distributor within the State and the number of small containers of automotive refrigerant returned for recycling by each retailer or distributor within the State. The sales data must be reported for each SKU, for each distributor, retailer, or other outlet, for each month and as totals for each reporting period.

(4) Each manufacturer or recycler of small containers of automotive refrigerant must report the number of small containers received for recycling. The returned container data must be reported for each SKU, for each retailer or other source of return, for each month, and as totals for each reporting period. The data must be segregated according to reason for the can return: returned unused, returned for recycle, returned breached. The refrigerant amount recovered must be reported for each manufacturer, and for each month.

(5) Each manufacturer of small containers of automotive refrigerant must report the amounts of unclaimed deposits retained, and an accounting and description of how those funds were spent to enhance consumer education. The report must highlight each component of an educational program and funds spent for that component.

(6) Each recycler of refrigerant from small containers of automotive refrigerant must report the amount of refrigerant recovered, along with the amount of that refrigerant recycled, reclaimed, or disposed of. The refrigerant amounts must be reported for each manufacturer, and for each month.

(b) Starting 2011, the ARB will calculate and publish the annual return rate for

containers of refrigerant subject to the requirements of this subarticle based on reports submitted to ARB by the manufacturers, distributors, and the retailers. The return rate of containers will be published by May 31 each year and calculated as the number of containers of refrigerant returned, divided by the number of containers sold to consumers during the period under consideration. The return rate will exclude returned small containers of automotive refrigerant that are breached (i.e., the number of returned small containers that are breached will be excluded from the numerator, but will be included in the denominator).

~~(c) Between January 1, 2010 and December 31, 2011, the target return rate for small containers is 90%. For periods beginning January 1, 2012 and thereafter, the target return rate for containers is 95%.~~

~~(d) Every two years beginning 2012, ARB will evaluate the return rates, as described in section 95367(b), based on data from the prior two calendar years compared to the target rates, as described in section 95367(c).~~

~~(1) If the two calendar year average return rate does not meet or exceed the applicable target return rate specified in section 95367(c), the Executive Officer or his or her designee shall increase the deposit amount of section 95366(a) by an additional \$5 unless manufacturers and retailers submit information that demonstrates either that the applicable annual return rate, as described in section 95367(b) was not calculated correctly, or that the underlying sales or returned can data, as described in sections 95367(a)(1) through (a)(4), did not accurately reflect the true return rate of used containers. Manufacturers or retailers must submit such information by March 1 of the calendar year in which the two calendar year average return rate does not meet or exceed the applicable target return rate specified in section 95367(c), and the Executive Officer or his or her designee shall decide by May 31 of that calendar year either to increase the deposit amount of section 95366(a) by an additional \$5 or leave the deposit amount of section 95366(a) unchanged.~~

~~(2) If the two calendar year average return rate exceeds the applicable target return rate specified in section 96367(c) by at least 2.5 percent for two consecutive reporting periods within a four year period of time, a manufacturer or retailer may request that the Executive Officer or his or her designee reduce the deposit amount of section 95366(a) by \$5, but in no event shall the deposit amount of section 95366(a) be less than \$5. A manufacturer or retailer must make this request by March 31 of a calendar year, and the Executive Officer or his or her designee shall reduce the deposit amount of section 95366(a) by \$5 by May 31 of that calendar year, unless the Executive Officer or his or her designee has information that demonstrates either that the applicable annual return rates, as described in section 95367(b) were not calculated correctly, or that the underlying sales or returned can data, as described in sections 95367(a)(1) though (a)(4), did not accurately reflect the true return rate of used containers.~~

~~(e) If the Executive Officer or his or her designee increases the deposit amount of~~

~~section 95366(a) as described in section 95367(d)(1), or decreases the deposit amount of section 95366(a) as described in section 95367(d)(2), all small containers of automotive refrigerant manufactured after January 1 of the year following that decision must have new labels and SKUs, which reflect the new deposit rate.~~

~~(f) If the Executive Officer increases the deposit amount specified in section 95366(a) pursuant to section 95367(d)(1), any small container of automotive refrigerant that was manufactured or packaged before January 1 of the year following that change to the deposit rate may be sold, supplied, or offered for sale in California.~~

~~(g) If the Executive Officer decreases the deposit amount of section 95366(a) pursuant to section 95367(d)(2), any small container of automotive refrigerant that was manufactured or packaged before January 1 of the year following that decision may be sold, supplied, or offered for sale in California until December 31 of the year following that decision. Any small container manufactured or packaged before January 1 of the year following the decision as described in section 95367(d)(2) to change the deposit rate that is not sold by the December 31 of the year following that decision must be recalled by the manufacturer no later than 90 calendar days after the December 31 of the year following that decision, and the manufacturer must report the total number of small containers 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.

§ 95367.1. Unclaimed or Unreturned Deposit Reporting Requirements.

(a) Beginning on [effective date], retailers must file reports to the Executive Officer that contain the following information:

(1) the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), and

(2) the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), that are transferred to manufacturers under section 95366(a)(4).

(b) Each quarterly report will be due subject to the following schedule: Reports for January – March will be due May 1st; reports for April – June will be due August 1st, 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.

§ 95369. Recordkeeping Requirements.

(a) Each manufacturer, distributor, and retailer of small containers of automotive refrigerant must retain invoices for a period not less than 5 years that show the manufacturer, distributor, or retailer name, business name, physical address, contact name, telephone number, fax number, e-mail address, web site address, sale date, and the quantity of small containers of automotive refrigerant purchased or sold.

(b) Each retailer of small containers of automotive refrigerant must maintain records that document, on a calendar year quarterly basis,

(1) the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), and

(2) the amounts of deposits collected under section 95366(a)(1) that are not returned or refunded to consumers under section 95366(a)(3), that are transferred to manufacturers under section 95336(b)(4).

The records required under this section must be maintained on a manufacturer-specific basis for a period not less than 5 years, and must be provided to ARB upon request.

~~(b)~~(c) Each recovery facility must maintain records for a period not less than 5 years that show the number of small containers received, and from whom they were received.

~~(c)~~(d) Each recovery facility must maintain records for a period not less than 5 years that show the quantity of automotive refrigerant recovered, along with the quantity of that recovered refrigerant that was recycled, reclaimed, or disposed of.

~~(d)~~(e) Each manufacturer must maintain records for a period not less than 5 years that show expenditures for educational programs that it funded from unclaimed deposits.

~~(e)~~(f) Records include copies of all invoices, books, correspondence, electronic data, or other pertinent documents in the possession or under the control of a manufacturer, distributor or retailer that is necessary to prove compliance with the requirements of this subarticle.

~~(f)~~(g) The records specified in this section may be stored in paper, electronic, or other usable formats.

~~(g)~~(h) The records specified in this section must be provided to ARB upon request by the Executive Officer or his or her designee.

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.

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Appendix B

Proposed Certification Procedures

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**Proposed
Certification Procedures
for Small Containers of Automotive Refrigerant**

Adoption Date: July 20, 2009
As Last Amended: January 5, 2010
Last Amended [Date]

NOTE: NOTE: Set forth below are proposed amendments to the Certification Procedures. This document, approved by the Air Resources Board at its January 22, 2009 hearing for incorporation by reference in California Code of Regulations (CCR), title 17, sections 95360 through 95370 Amendments to existing sections proposed and subject to comment in this rulemaking are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.

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The definitions in Section 95361, Title 17 of the California Code of Regulations (CCR) apply to this Certification Procedure. For purposes of these Procedures, the term "ARB" refers to the California Air Resources Board.

1. GENERAL INFORMATION AND APPLICABILITY

This document specifies the criteria and procedures used by ARB to evaluate and certify small containers of automotive refrigerant that are manufactured for sale, advertised for sale, sold, or offered for sale in California, or that are introduced, delivered or imported into California for introduction into commerce. An Executive Order will only be issued for a small container of automotive refrigerant that demonstrates compliance with all applicable certification requirements.

Compliance with the standards specified in these procedures does not exempt small containers of automotive refrigerant from compliance with other applicable federal or state statutes or regulations such as safety codes and other safety regulations, nor will the ARB test for or determine compliance with such other statutes or regulations.

2. CERTIFICATION REQUIREMENTS

A manufacturer seeking an Executive Order for small containers of automotive refrigerant that are subject to the requirements set forth in Title 17, CCR sections 95360 *et seq.* must submit information demonstrating that the small containers of automotive refrigerant comply with each of the requirements set forth below.

2.1 Self-sealing Valve and Leakage Rate

- (A) Each container of refrigerant must be equipped with a single self-sealing valve that automatically closes and seals when not dispensing refrigerant.
- (B) The leakage rate from each container must not exceed 3.0 grams per year when the self-sealing valve is closed. This leakage rate applies to new, full containers as well as containers that may be partially full.
- (C) The leakage rate specified in 2.1(B) of these procedures will be determined by TP-503, Test Procedure for Leaks from Small Containers of Automotive Refrigerant, adopted July 20, 2009, which is incorporated herein by reference.
- (D) All testing to demonstrate compliance with sections 2.1(B) and (C) of these procedures must be conducted by an independent test laboratory in the United States. For purposes of this requirement, an independent test laboratory is one that is not owned, operated or affiliated with the applicant seeking an Executive Order.
- (E) Test procedures other than those specified in this Certification Procedure

may be used only if prior written approval is obtained from the Executive Officer. A request for approval to use an alternative test procedure must describe the proposed alternative test procedure, including equipment specifications and personnel skill requirements necessary to conduct the test. If training is required to properly perform a test, a proposed training program must be included. The Executive Officer will utilize good engineering judgment to determine if an alternative test procedure will produce data that is as accurate and precise as the data generated from the specified test procedures.

If the Executive Officer approves a request to utilize an alternative test procedure, he or she may condition the approval upon provisos including, but not limited to, the manufacturer's acknowledgement and agreement that notwithstanding the approval, ARB will determine the leakage rate for a small container of automotive refrigerant by using test procedure TP-503, Test Procedure for Leaks from Small Containers of Automotive Refrigerant, adopted July 20, 2009, which is incorporated herein by reference, and will base decisions whether to initiate enforcement actions for non-compliant small containers of automotive refrigerant on the results obtained from TP - 503.

- (F) Test procedures referred to in this subarticle can be obtained from the California Air Resources Board.

2.2 Recovery Facilities

- (A) Each manufacturer seeking an Executive Order for small containers of refrigerant must identify and register with ARB each facility that will be used to recover refrigerant from a small container. Registration includes providing location, contact information, a description of recovery equipment including operating parameters such as vacuum to be used and operational capacity, and description of any processing and ultimate fate of the recovered refrigerant. Any recovery facility must use best operating procedures to minimize leakage of refrigerant to the atmosphere.

2.3 Container Labeling Requirements

- (A) Each container of refrigerant must clearly display instructions for proper use in both English and Spanish. The instructional language must be approved by ARB and must include the following:
 - (1) General safety precautions with the following statements required:
 - (a) "Wear protective (rubber) gloves and safety glasses".

- (b) "Contents under pressure".
- (c) "Do not expose to temperatures above 120°F".
- (d) "Store in a cool place".
- (e) "Do not puncture or incinerate".
- (f) "Keep out of reach of children".

(2) Vehicle operating parameters for the performance of a typical DIY air conditioning recharge, phrases to be included are:

- (a) "Start engine..."
- (b) "... Set air conditioner on maximum cooling".
- (c) "...fan on highest setting (high)".

(3) Procedures for recharging with the following phrases included as a minimum requirement:

- (a) "Check hoses and ports for leaks and repair before recharging".
- (b) "Follow instructions on recharge hose." – or similar instruction.
- (c) "Hold can upright to charge. While charging, rotate can between 12 o'clock and 3 o'clock, continually agitating (sweeping) can back and forth." – or similar instruction.
- (d) "Continue process until can is empty (5 to 15 minutes) or until correct amount of refrigerant is charged into system". – or similar instruction.
- (e) An instructional phrase such as "Check A/C system nameplate for maximum volume", or "Check A/C system pressure", followed by the instruction: "Do not overcharge".
- (f) "Visit 'a *website address*'" [the website will contain information as described in Certification Procedures 2.4 (A)(6)] with one of the following: "for best practices", "for more info", "to learn more", "for project instructions".

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

(1) The following statement in English and Spanish in a font size of at least 6 point unless otherwise specified “Contents of this container contribute to Global Warming. It is illegal to destroy or discard this container or its contents. Return for ~~\$\$\$~~ \$10 refund.” Refer to Title 17, CCR section 95360 *et seq.* for actual dollar amount.

(2) The following statement in English and Spanish in a font size of at least 9 point for English and 8 point for Spanish: “Approved for use in California”.

(3) The following statement in English and Spanish: “~~\$\$\$~~ \$10 refundable deposit, if returned within 90 days of purchase”. “~~XX~~” “\$10” must be in the lead position and at least 15 point font. “Refundable Deposit” must be at least 10 point font for English and 7 point font for Spanish. “If returned within 90 days of purchase” must be at least 7 point font for English and 6 point font for Spanish. Refer to Title 17, CCR section 95360 *et seq.* for actual dollar amount.

(4) The following statement in English and Spanish: “Do not vent contents to atmosphere”. This must be at least 10 point font for English and 7 point font for Spanish.

(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.

(6) (4) A product SKU code that is uniquely identifiable to this program by dedicated markings, UPC coding, and program identification markings, language or icons that serve to reasonably differentiate this product as approved for use in California.

- (C) Each manufacturer must display on each small container of refrigerant offered for sale in California a legible date or coded data of manufacture and file an explanation of such date code with the Executive Officer no later than three months after the effective date of this subarticle or within three months of production, and within three months of any change in coding.
- (D) Each manufacturer must supply to the Executive Officer a list of California specific SKU codes and non-California SKU codes with their application no later than three months after the effective date of this subarticle or within three months of production, and within three months of any change in coding.

2.4 Education Requirement

- (A) Each manufacturer seeking an Executive Order for small containers of refrigerant must develop educational materials suitable for use by ultimate purchasers of automotive refrigerant in small containers. The format and content of the educational materials must be in both English and Spanish, must be approved by the Executive Officer, and must include the following:
- (1) Advice to identify and repair leaks in the MVAC system;
 - (2) Proper techniques to minimize can heel and servicing loss while transferring refrigerant from the container to the MVAC system;
 - (3) Information on environmental hazards associated with refrigerant;
 - (4) Information on risks and consequences of overcharging or undercharging the MVAC due to lack of professional diagnostic techniques.
 - (5) Components of the container deposit and return program.
 - (6) Web pages containing the information in items 1 through 5 above that are suitable for browsing by do-it-yourself consumers of automotive refrigerant in small containers
 - (7) Brochures containing the information in items 1 through 5 above that are suitable for distribution to do-it-yourself consumers of automotive refrigerant in small containers
 - (8) Each manufacturer must also provide a description of any enhanced educational program it proposes to fund with unclaimed consumer deposits as specified in Title 17, CCR section 95366(b)(6).
- (B) Any manufacturer who sells small containers of automotive refrigerant that are subject to Title 17, CCR section 95360 *et seq.* must make available to consumers an Internet web site containing the educational course materials described in 2.4 (A)(6) of these certification procedures.
- (C) Any retailer who sells small containers of automotive refrigerant that are subject to Title 17, CCR section 95360 *et seq.* must display material as described in 2.4 (A)(7) of these certification procedures to customers.
- (D) On or after January 1, 2010, any retailer selling small containers of automotive refrigerant must display a placard next to the display of small containers of automotive refrigerant. This placard must be at least 8 ½

inches by 11 inches and describe environmental hazards associated with release of HFC-134a, references for proper recharge techniques, and a description of the deposit and recycle program. The language must be in English and Spanish and must be approved by ARB.

3. SUBMITTING AN APPLICATION

An applicant must submit the following information in an application for certification:

- 3.1** Model number(s), size(s), and SKU(s) of the small containers of automotive refrigerant for which certification is requested. The applicant must supply test data that demonstrates the small cans of automotive refrigerant comply with each of the requirements specified in Section 2.1 of these Procedures.
- 3.2** The bill of materials and engineering drawings of the small containers of automotive refrigerant that detail the dimensions specific to each component.
- 3.3** A sample of the small container of automotive refrigerant.
- 3.4** Test data from each of the test procedures specified in Section 2.1 of these procedures.
- 3.5** Any other test data that supports the requirements in 3.4 above and that would assist in the determination of certification.
- 3.6** The language and documentation required by Sections 2.2 through 2.4 of these procedures.

4. APPLICATION REVIEW

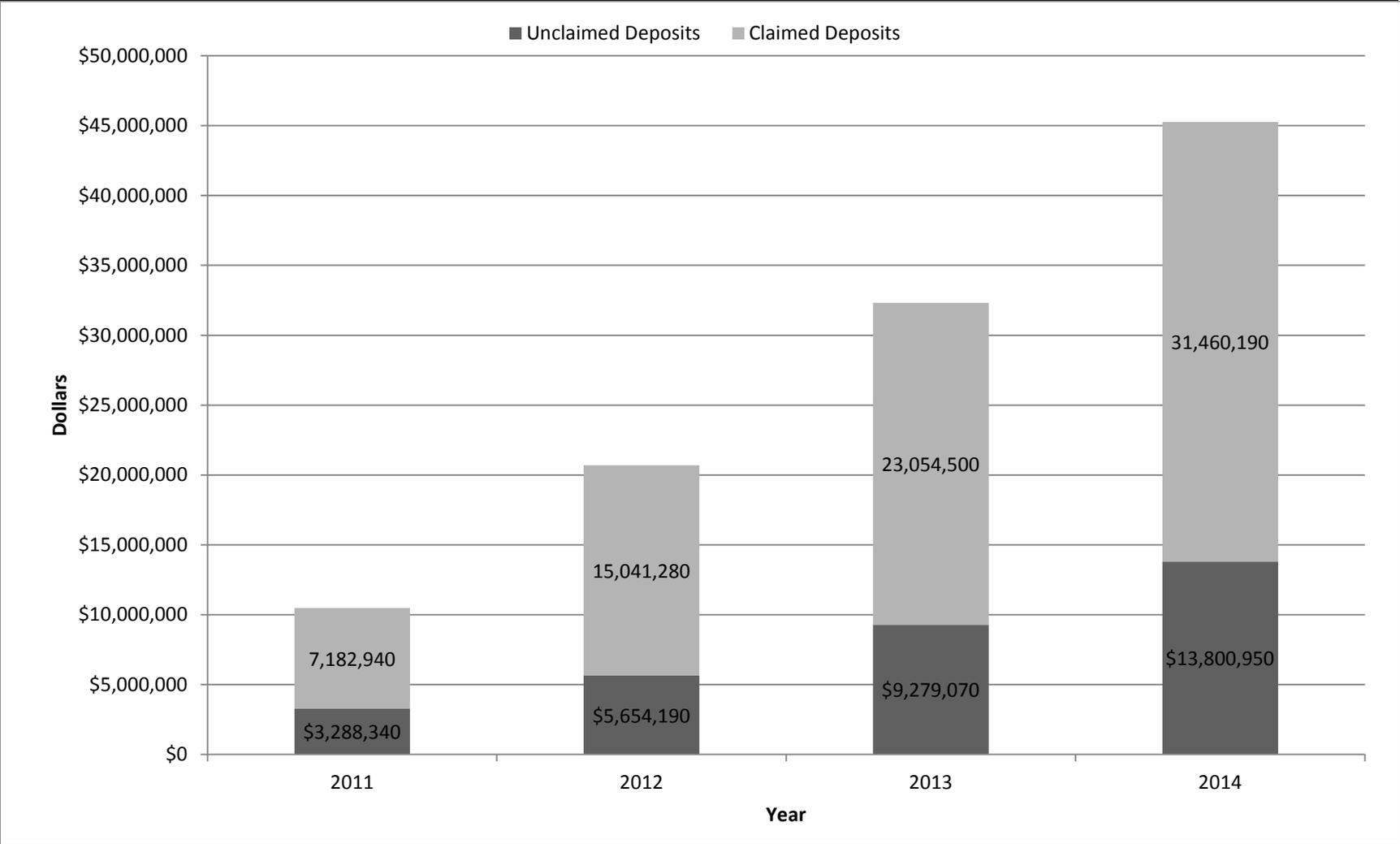
- 4.1** If an application for certification contains all of the information required by these procedures, it will be deemed to be complete, and will be processed for certification. The application will not be deemed complete unless an applicant has supplied all of the information required by section 3 of these procedures.
- 4.2** The Executive Officer may find it necessary to request additional information from the applicant in order to fully evaluate the application.
- 4.3** Applications will be processed in accordance with the procedures and time periods set forth in Title 17, CCR section 60030 *et seq.* The time periods may be extended by the Executive Officer for good cause.
- 4.4** An application must be signed by the applicant or their authorized delegate.

Appendix C

Estimated Accumulation of Unclaimed Deposits by All Retailers

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ESTIMATED ACCUMULATION OF UNCLAIMED DEPOSITS BY ALL RETAILERS



Data Sources: Unclaimed deposits were estimated from the annual reports provided by retailers

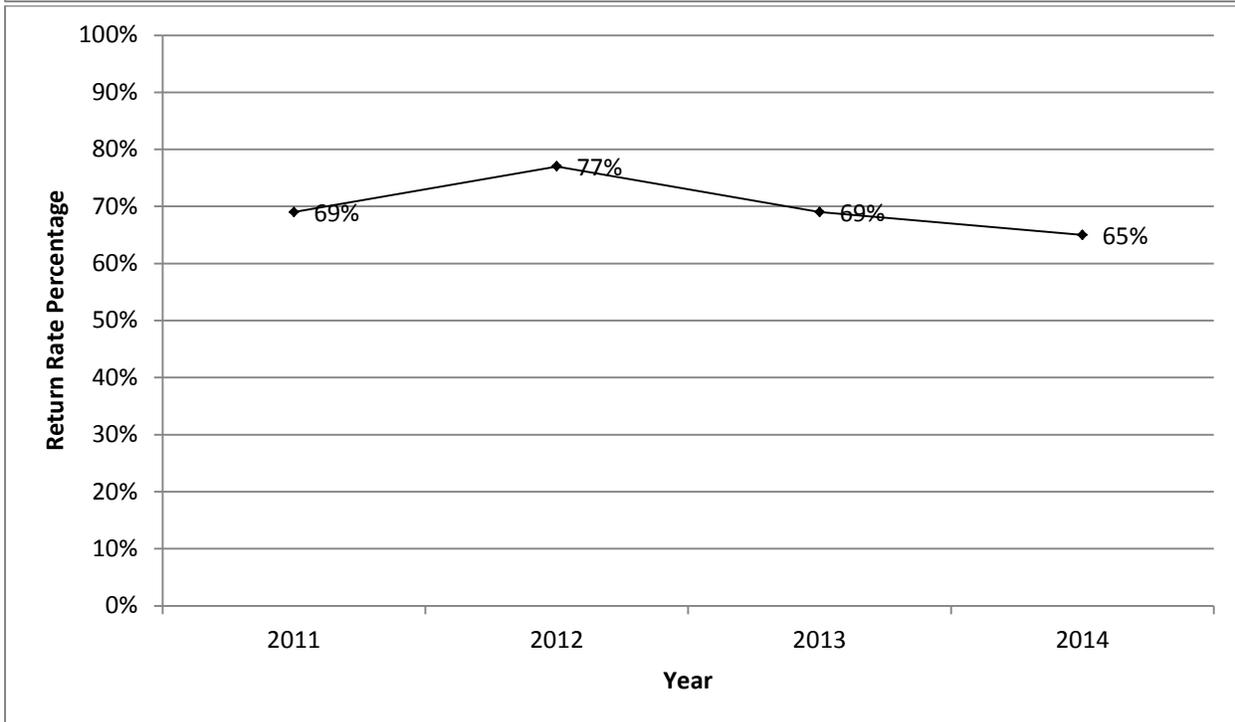
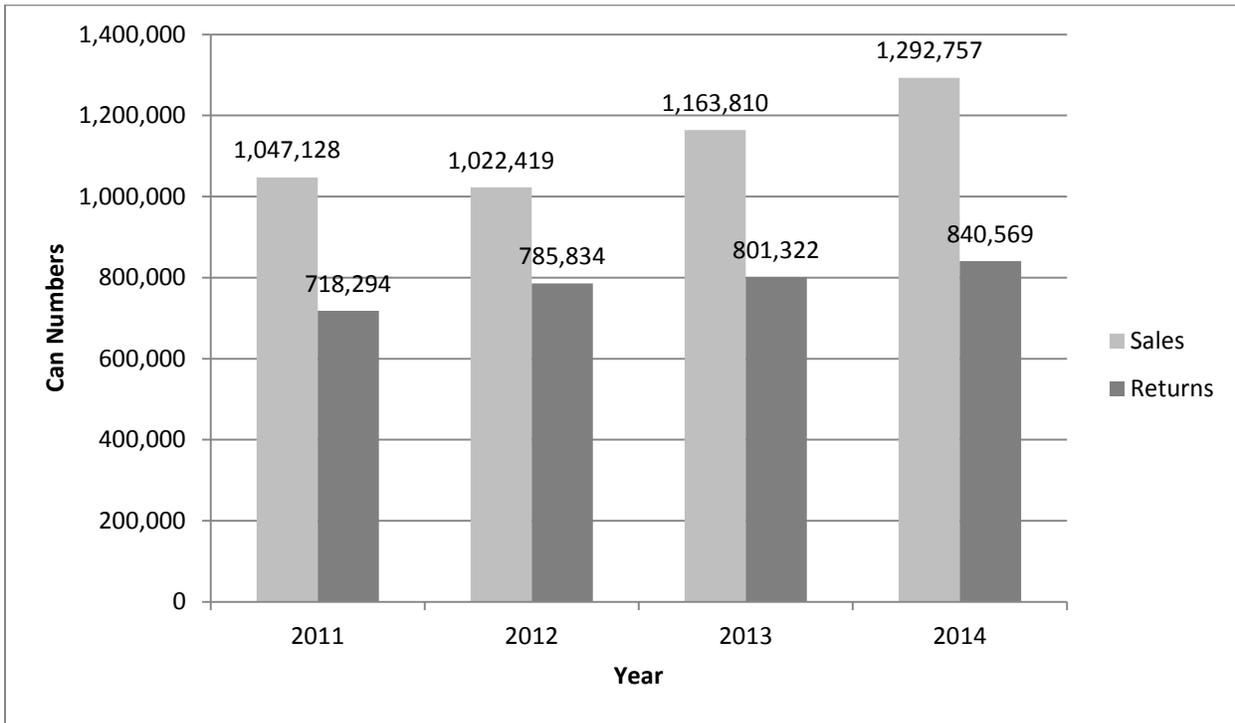
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Appendix D

Retailer Sales and Return Rates

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Retailer Sales and Return Rates



Data Sources: Can return rates were estimated from the annual reports provided by retailers.

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