

## ITLE 17. CALIFORNIA AIR RESOURCES BOARD

### NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE REGULATION FOR SMALL CONTAINERS OF AUTOMOTIVE REFRIGERANT

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption the proposed amendments to the Regulation for Small Containers of Automotive Refrigerant.

DATE: April 22, 2016

TIME: 9:00 am

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

Please consult the agenda for the hearing, which will be available at least 10 days before April 22, 2016, to determine the order in which this item will be considered.

#### **WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS**

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on March 4, 2016. Written comments not physically submitted at the hearing must be submitted on or after March 4, 2016 and received **no later than 5:00 pm on April 18, 2016**. ARB requests that when possible, written and email statements be filed at least 10 days before the hearing to give ARB staff and Board members additional time to consider each comment. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

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

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

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

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

### **AUTHORITY AND REFERENCE**

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 38580, 39600, and 39601. This action is proposed to implement, interpret, and make specific sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601 of the Health and Safety Code.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)**

**Sections Affected:** Proposed amendments to California Code of Regulations, title 17, sections 95362, 95364, 95366, 95367, and 95369 and to Section 2.3(B) of the incorporated document "Certification Procedures for Small Containers of Automotive Refrigerant". Proposed adoption of new sections 95364.1 and 95367.1, title 17, California Code of Regulations.

### **Background and Effect of the Proposed Rulemaking:**

The Board initially adopted the Regulation for Small Containers of Automotive Refrigerant (regulation) in January of 2009 to reduce greenhouse gas (GHG) emissions associated with do-it-yourself servicing motor vehicle air conditioning (MVAC) systems. The regulation is comprised of a manufacturer-administered deposit, container return, and recycling program whereby retailers collect a refundable \$10 deposit from consumers at the time of sale. Consumers reclaim the \$10 deposit when they return used containers to the retailers.

The original intent of the regulation was that retailers transfer all unclaimed consumer container deposits to manufacturers for use in enhanced education programs to benefit consumers of this product. During the implementation of the regulation, 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 to the manufacturers, and to establish new quarterly recordkeeping and reporting requirements which ensure the retailers' compliance with this provision.

In addition, ARB staff is also proposing to expand the scope of how the unclaimed container deposit money is spent by the manufacturers, and to eliminate the provision for adjusting the deposit, which will be fixed at \$10. Finally, staff is proposing to amend the Certification Procedures by requiring additional language on the label forbidding the venting of the refrigerant and encouraging consumers to either return the product after usage or retain and use it until empty. The regulation would also be amended to 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 new labels.

ARB may also consider other changes to the sections affected, as listed on page 2 of this notice, during the course of this rulemaking process.

**Objectives and Benefits of the Proposed Regulatory Action:**

The ARB staff is proposing amendments to clarify the existing requirement that retailers must transfer unclaimed consumer deposits to manufacturer-managed accounts to be spent on programs for the benefit of the consumers, to establish new recordkeeping and quarterly reporting requirements which ensure the retailers' compliance with this provision, to expand the scope of how this money is spent, and to eliminate the provision for adjusting the deposit, which will be fixed at \$10. Staff is also proposing to revise the Certification Procedures to require additional language on the label forbidding the venting of the refrigerant and encouraging consumers to either return the product after usage or retain and use it until empty. This modification will further educate the consumer reducing the emissions of refrigerant and encouraging recycling of the container. Finally, staff is proposing to amend the regulation to provide a one-year sell-through period during which containers labeled with currently approved labels can be sold and depleted.

These amendments will ensure that unclaimed consumer deposits will ultimately be utilized to benefit consumers regarding the global warming impacts associated with automotive refrigerant, improved MVAC recharging techniques, and other projects or programs for reducing greenhouse gases, instead of being retained by retailers. The amendments will also provide manufacturers greater flexibility regarding the programs they can fund with unclaimed consumer deposits, and will ensure that consumers are more fully informed regarding improperly venting emissions of refrigerant and regarding the proper use and recycling of small containers.

**Comparable Federal Regulations**

Although the Federal Clean Air Act (CAA) and U.S. Environmental Protection Agency (U.S. EPA) regulations generally regulate certain aspects regarding the usage of non-ozone depleting refrigerants used in MVAC systems; they do not currently restrict or regulate the sales or usage of small containers of non-ozone-depleting automotive refrigerant. Therefore, the existing California regulation is more stringent than comparable federal regulations. The amendment proposal would not affect this stringency. It should be noted that U.S. EPA is proposing changes to regulations implementing Section 608 of the CAA to include a manufacturer's requirement to install self-sealing valves on all small containers of automotive refrigerant sold in the United States. Section 608 includes requirements applicable to refrigerant use during stationary heating, ventilation, and air conditioning servicing.

Section 609 of the CAA includes requirements specific to refrigerant use during MVAC servicing. Section 609(e) of the CAA [42 U.S.C. § 7671h(e)] and Title 40, Code of Federal Regulations (CFR) section 82.34(b) have restricted, as of November 15, 1992, the sale, distribution, or offer for sale or distribution of ozone-depleting refrigerants that are suitable for use in motor vehicle air-conditioning

systems and that are in containers with less than 20 pounds of refrigerant, except to those technicians who have been trained and certified pursuant to an EPA-approved course. On March 12, 2004, the U.S. EPA decided not to extend a proposed restriction on the sale of small containers of pure HFC or PFC refrigerants to certified technicians.

Section 608(c)(2) of the CAA [42 U.S.C. § 7671g(c)(2)] has generally prohibited any person from venting or releasing any substance that is used as a substitute for an ozone-depleting refrigerant into the atmosphere since November 15, 1995. In 2004, the U.S. EPA amended its regulations regarding refrigerant recycling to clarify that the section 608(c)(2) venting ban also extends to pure HFC and perfluorocarbon (PFC) refrigerants. As mentioned previously, on November 9, 2015, U.S. EPA proposed changes to implementing regulations under section 608 of the CAA that would include a manufacturer's requirement to install self-sealing valves on all small containers of automotive refrigerant sold in the United States.

**An Evaluation of Inconsistency or Incompatibility with Existing State Regulations Pursuant to Government Code 11346.5(a)(3)(D)**

During the process of developing the proposed regulatory action, ARB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

**DISCLOSURE REGARDING THE PROPOSED REGULATION**

**Fiscal Impact/Local Mandate Determination Regarding the proposed Action (Pursuant to Government Code sections 11346.5(a)(5) & (6)):**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any State agency or in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

**Housing Costs (Pursuant to Government Code Sec. 11346.5(a)(12)):**

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

**Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Pursuant to Government Code Sec. 11346.3(a); 11346.5(a)(7); 11346.5(a)(8)):**

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting

businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

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 the addition of quarterly record keeping and reporting for the unclaimed container deposit funds. The amendment also adds language to clarify a requirement that the retailers must transfer the unclaimed deposits to manufacturers on a quarterly basis.

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 be 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 manufactures a one-time design and set up cost. However, as the three container manufacturers are not located in California, statewide total cost is zero and the cost to California business is zero.

**Results of The Economic Impact Analysis/Assessment Prepared Pursuant to Government Code Sec. 11346.5(a)(10):**

**NON-MAJOR REGULATION: Statement of the Results of the Economic Impact Assessment (EIA):**

**Effect on Jobs/Businesses:**

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

Because of zero 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. Assuming the cost of the additional labeling is passed to California consumers, the price of small container automotive refrigerant cans is estimated to increase by \$0.04. Thus the impact on California retailers' sales should be minimal.

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.

*Benefits of the Proposed Regulatory Amendment:*

The objective of the proposed amendments to the regulation is to clarify the existing requirement that retailers must transfer the unclaimed consumer deposits to manufacturers-managed accounts to be spent on programs for the benefit of the consumers, to establish new quarterly recordkeeping and reporting requirements to ensure the retailers' compliance with this provision, to expand the scope of how this money is spent, and to eliminate the provision for adjusting the deposit, which will be fixed at \$10. In addition, staff is proposing to revise the Certification Procedures to require additional language on the label forbidding the venting of the refrigerant and encouraging consumers to either return the product after usage or retain and use it until empty. This modification will further educate the consumer about the usage of this product, reducing the emissions of refrigerant and encouraging recycling of the container.

A summary of these benefits is provided; please refer to "Objectives and Benefits", under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion on page 3 of this notice.

**Business Report (Pursuant to Government Code Sec. 11346.5(a)(11); 11346.3(d))**

In accordance with Government Code sections 11346.3(d) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the proposed regulatory action that apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

**Cost Impacts on Representative Private Persons or Businesses (Pursuant to Government Code Sec. 11346.5(a)(9)):**

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The cost impact from the additional labeling will be minimal for California consumers of this product.

**Effect on Small Business (1 CCR 4(a) and (b)):**

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because there are no anticipated costs to comply with the regulation. However, the price (sales) of individual containers will have a minimal increase due to the additional labeling.

**Alternatives Statement (Pursuant to Government Code Sec. 11346.5(a)(13)):**

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by ARB, or that has otherwise been identified and

brought to the attention of ARB, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

### **Environmental Analysis**

ARB, as the lead agency under the California Environmental Quality Act (CEQA), has reviewed the proposed regulatory action and concluded that this is exempt pursuant to CEQA Guidelines §15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed action may result in significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter III of the Staff Report: Initial Statement of Reasons (ISOR).

### **SPECIAL ACCOMMODATION REQUEST**

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alternativo u otro idioma;
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

### **AGENCY CONTACT PERSONS**

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Dr. Dongmin Luo, P.E., Manager of the Air Quality and Climate Science Section, at (916) 324-8496 or Mr. Winston Potts (designated back-up contact), P.E., Air Resources Engineer, Air Quality and Climate Science Section, (916) 323-2537.

### **AVAILABILITY OF DOCUMENTS**

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: "Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on March 1, 2016.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the Regulations Coordinator.

### **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

### **FINAL STATEMENT OF REASONS AVAILABILITY**

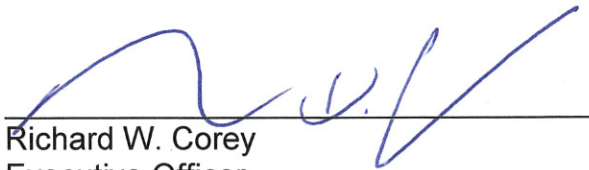
Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website listed below.



**INTERNET ACCESS**

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2016/smallcans2016/smallcans2016.htm>

CALIFORNIA AIR RESOURCES BOARD



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Richard W. Corey  
Executive Officer

Date: February 16, 2016

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.arb.ca.gov](http://www.arb.ca.gov).*