

State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

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

Public Hearing Date: April 22, 2016
Agenda Item No.: 16-4-3

I. GENERAL

- A.** The Staff Report: Initial Statement of Reasons for Rulemaking (staff report), entitled “Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant”, released March 1, 2016, and as revised and rereleased on March 3, 2016¹, is incorporated by reference herein. The staff report contained a description of the rationale for the proposed amendments. The text of the proposed amendments to title 17, California Code of Regulations (CCR) sections 95362, 95364², 95366, 95367, 95369, and to Section 2.3(B) of the incorporated document “Certification Procedures for Small Containers of Automotive Refrigerant,” and the text of the proposed adoption of new sections title 17, CCR 95364.1 and 95367.1 was included in the appendices to the staff report. On March 1, 2016, all references relied upon and identified in the staff report were made available to the public. All documents associated with this rulemaking were made available to the public and are available on ARB’s website at: <https://www.arb.ca.gov/regact/2016/smallcans2016/smallcans2016.htm>.

On April 22, 2016, the Air Resources Board (ARB or Board) conducted a public hearing to consider staff’s proposed amendments. At the conclusion of the hearing, the Board approved Resolution 16-5, approving for adoption the proposed amendments to title 17, CCR sections 95362, 95364³, 95366, 95367, 95369, and to Section 2.3(B) of the incorporated document “Certification Procedures for Small Containers of Automotive Refrigerant,” and the proposed adoption of new sections title 17, CCR 95364.1 and 95367.1 that were initially proposed by staff and described in the Notice of Public Hearing (45-day notice) and staff report, along with modifications suggested by staff in Attachment C presented at the hearing. The

¹ Subsequent to March 1, 2016 ARB Staff revised the ISOR to more explicitly specify the purpose and necessity of the amended labeling provisions of the regulation, and rereleased the revised ISOR on March 3, 2016.

² The Notice of Public Hearing and the staff report inadvertently indicated that the rulemaking action would encompass proposed amendments to title 17, CCR section 95364. However, both the staff report and the text of the proposed amendments clearly reflect that the amendments do not include amendments to title 17, CCR section 95364.

³ Ibid.

modifications in Attachment C were made in response to comments received since the staff report was published on March 1, 2016 as part of the 45-day notice. Resolution 16-5 directed the Executive Officer to make the modified regulatory language in Attachment C, and any additional conforming modifications, available for public comment, with any additional supporting documents and information, for a period of at least 15 days, as required by Government Code section 11346.8, and to consider written comments submitted during the public comment period, and to make any modifications as may be appropriate in light of the comments received. The Executive Officer was directed to then either adopt the final regulatory amendments after addressing all appropriate modifications or to present the amendments to the Board for further consideration if warranted in light of the comments.

After the April 22, 2016 public hearing, staff proposed modifications to the originally proposed amendments to title 17, CCR sections 95362, 95366, 95367, and 95369, and to Section 2.3(B) of the incorporated document "Certification Procedures for Small Containers of Automotive Refrigerant." Staff additionally proposed amendments to the originally proposed adoption of new title 17, CCR sections 95364.1 and 95367.1.

The document "Certification Procedures for Small Containers of Automotive Refrigerant", adopted July 20, 2009, and last amended on January 17, 2017, was incorporated by reference because it would be cumbersome, unduly expensive, and otherwise impractical to publish it in the CCR. The incorporated document was made available by ARB upon request during the rulemaking action and will continue to be available in the future.

The text of the proposed modifications to the originally proposed amendments and to the originally proposed adoption of new title 17, CCR sections 95364.1 and 95367.1 were made available for a supplemental 15-day comment period through a "Notice of Public Availability of Modified Text" (first 15-day notice). The first 15-day notice and the attachments were distributed on August 26, 2016 to all stakeholders, interested parties, and to other persons generally interested in ARB's rulemaking requirements applicable to small containers of automotive refrigerant. The first 15-day notice listed the ARB website where interested parties could obtain the complete text of the regulations that would be affected by the modifications, with all of the modifications clearly indicated. These documents were also published on ARB's webpage established for this rulemaking. The first 15-day notice is incorporated by reference herein.⁴

⁴ Staff did not indicate a deletion to originally proposed regulatory language in the first 15-day notice. Specifically, ~~unclaimed deposits retained,~~ was inadvertently omitted from the first sentence of title 17, CCR section 95367(a)(5), (occurring after the phrase "must report the amounts of"). This omission is nonsubstantial, because the deleted text was replaced with "both deposits that retailers transfer to it under section 95366(a)(4), and the deposits it collects under section 95366(b)(4)," and the latter text clarifies without materially altering the requirements, rights, responsibilities of manufacturers to report the amounts of unclaimed deposits established in the original text. The latter text merely provides greater specificity regarding the phrase "unclaimed deposits."

After considering public comments received in response to the first 15-day notice, staff proposed additional modifications to the originally proposed adoption of new title 17, CCR section 95364.1. These additional modifications were made available for another supplemental 15-day comment period through a “Notice of Public Availability of Modified Text” (second 15-day notice). The second 15-day notice and the attachment thereto was distributed on October 11, 2016 to all stakeholders, interested parties, and to other persons generally interested in ARB’s rulemaking requirements applicable to small containers of automotive refrigerant. The second 15-day notice listed the ARB website where interested parties could obtain the complete text of the regulations that would be affected by the modifications, with all of the modifications clearly indicated. These documents were also published on ARB’s webpage established for this rulemaking. The second 15-day notice is incorporated by reference herein.

B. MANDATES AND FISCAL IMPACTS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

The Board has determined that this regulatory action will not result in a mandate to any local agency or school district the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

C. CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the Staff Report, in staff’s comments and responses at the hearing, and in this FSOR, the Board determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law than the action taken by the Board.

II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

As discussed in Section I of the staff report, the initial regulation established provisions regarding two separate deposits – a \$10 deposit applicable to consumers-retailers, and a deposit applicable to manufacturer-retailers/manufacturer-distributors, but the regulation did not establish the amount of that deposit. The initial regulation further required manufacturers to report the amounts of unclaimed deposits retained to ARB, (§ 95367(a)(5)), but did not explicitly specify the source of such unclaimed deposits. However, because the initial regulation also required that both unclaimed consumer-retailer deposits and unclaimed manufacturer-retailer/manufacturer-distributor deposits 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, it is clear that both unclaimed consumer-retailer deposits, and unclaimed manufacturer-retailer/manufacturer-distributor deposits collectively comprise the “unclaimed deposits” previously specified in § 95367(a)(5) and that are merely specified in greater detail in the present rulemaking action.

MODIFICATIONS APPROVED AT THE BOARD HEARING AND PROVIDED FOR IN THE 15-DAY COMMENT PERIODS

Various modifications to the original proposal were made in order to address comments received during the 45-day public comment period and during the first 15-day comment period, and to clarify the regulatory language. Pursuant to the Board direction provided in Resolution 16-5, ARB issued the first 15-day notice on August 26, 2016, which presented additional modifications to the regulatory text and to the incorporated document “Certification Procedures for Small Containers of Automotive Refrigerant.”⁵ The first 15-day notice described each substantive modification to the original proposal and the rationale for the modifications.

ARB subsequently issued the second 15-day notice on October 11, 2016, which presented additional modifications to the regulatory text.⁶ The second 15-day notice described each substantive modification to the original proposal and the rationale for that modification.

NON-SUBSTANTIAL MODIFICATIONS

Subsequent to the 15-day public comment periods mentioned above, staff identified the following additional non-substantive changes to the regulation.

Section 95369(b): The prior text:

“Each retailer of small containers of automotive refrigerant must maintain records that document, on a calendar year 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 or their designees under section 95366(a)(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.”

was modified by moving the last sentence to the first sentence and rewording it to:

“Each retailer of small containers of automotive refrigerant must maintain records on a manufacturer-specific basis for a period not less than 5 years, and must provide such records to ARB upon request that document, on a calendar year basis:

⁵ California Air Resources Board. Notice of Public Availability of Modified Text. Posted August 26, 2016. Available online at: <https://www.arb.ca.gov/regact/2016/smallcans2016/smallcans2016.htm>

⁶ California Air Resources Board. Notice of Public Availability of Modified Text. Posted October 11, 2016. Available online at: <https://www.arb.ca.gov/regact/2016/smallcans2016/smallcans2016.htm>

- (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 or their designees under section 95366(a)(4).

This modification constitutes a non-substantial change to the prior regulatory text because it more accurately and clearly reflects the intent of the requirements and incorporates needed grammatical edits, but does not materially alter the requirements or conditions of the proposed rulemaking action.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

Written comments were received during the 45-day comment period in response to the April 22, 2016 public hearing notice, and written and oral comments were presented at the Board Hearing. Listed below are the organizations and individuals that provided comments during the 45-day comment period:

Commenter	Affiliation
Barrett, Will*	American Lung Association (ALA)
Bullis, Cory*	Environmental Defense Fund (EDF)
Flowers, Christine** Jackson, Jen Kaufman, Debra Bui, Teresa** Magavern, Bill	California Product Stewardship Council San Francisco Department of the Environment Alameda Stop Waste Californians Against Waste (CAW) Coalition for Clean Air (CPSC et. al)
Handy, Lisa Roberts, Mark Starr, Christina	Environmental Investigation Agency (EIA)
Lowe, Aaron**	Auto Care Association Coalition for Auto Repair Equality California Automotive Wholesalers Association (ACA, et. al).
Schley, Elaine	Spectrum Brands (SB)

The commenters listed above with a single asterisk (*) only presented oral testimony at the April 2016 Board Hearing. The commenters listed above with double asterisks (**) submitted written comments during the 45-day comment period and presented oral testimony at the April 2016 Board Hearing.

Set out below is a summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reason for making no change. Only objections or recommendations directed at the agency's proposed action or the procedures followed by the agency in proposing or adopting the action are summarized as permitted by title 2, CCR section 11346.9. Repetitive or irrelevant comments have been aggregated and summarized as a group. A comment is "irrelevant" if it is not specifically directed at the agency's proposed action or the procedure followed by the agency in proposing or adopting the action. The comments have been grouped whenever applicable.

When comments have been grouped, a brief summary of the comment is given to relay the content of all the comments in the group.

COMMENTS PRESENTED DURING THE 45-DAY COMMENT PERIOD

A. Comments of General Support

1. Comment: On behalf of the California Product Stewardship Council, the Coalition for Clean Air, Alameda Stop Waste, and San Francisco Department of the Environment, we support the proposed amendments. ARB staff has been thorough in the Staff Report and in setting forth the rationale of the amendments. (CPSC et al.)
2. Comment: We thank the Board for its leadership on this issue, and support the proposed amendments. (CAW)
3. Comment: The proposed amendments are a common sense way of keeping pollutants that impact climate change out of the atmosphere, through the recycling program and through consumer education. We support your effort here. We think that we can increase and maintain the program benefits, ensure ongoing consumer education and awareness and continue the commitment that the Board has always followed to review programs as they go forward and make sure that they're working properly or take the appropriate actions to make sure that we're getting all the benefits we need. (ALA)
4. Comment: We support the Agency's pursuit of the full realization of this nation-leading program, which has made great strides in cutting the emissions of high GWP refrigerants. (EDF)
5. Comment: The Proposal introduces several amendments to the Regulation for Small Containers of Automotive Refrigerant which EIA strongly supports. (EIA)

Agency Response to Comments A.1 through 5: ARB appreciates the comments supporting the proposed amendments.

B. Eliminate Existing Container Deposit/Return Program

1. Comment: We do not believe, based on the current situation, that the recycling program should continue. ARB staff has admitted that there is very little refrigerant remaining in the vast majority of used cans, and therefore the value of the program in reducing global warming emissions is extremely low, because used containers are being transported to Texas to be recycled, but such containers have practically minimal amounts of refrigerant to be recovered. The current information on the program effectiveness fails to demonstrate that the program provides any significant benefit in reducing emissions of global warming gases. (ACA et al.)
2. Comment: We remain supportive of ARB's August 2015 proposal that would have eliminated the recycling program. While the infrastructure for recycling small cans of refrigerant is in place, it also adds incremental cost and complexity to our operations. Further data provided by ARB at that time concluded that the GWP impact of the can transportation is higher than that from the refrigerant remaining in the can heels. At that time, we also expressed concerns regarding the short transition timeframe and requested clarity on other elements, to avoid additional costly changes in the future. (SB)

Agency Response to Comments B.1 and 2: No change was made in response to these comments. The provisions establishing the recycling program were established in the rulemaking action associated with the initial regulation for small containers of automotive refrigerant, and these comments therefore extend beyond the scope of this rulemaking action because they do not raise any objections or recommendations directed to the proposed amendments. Although ARB staff initially considered eliminating the deposit program, it ultimately decided to retain the deposit program after evaluating the environmental benefits associated with the program and consulting with the California Department of Toxic Substances Control, California Department of Resources Recycling and Recovery (CalRecycle), the California Product Stewardship Council, and multiple local waste districts, and therefore the notice for this rulemaking action correctly reflects that the amendments do not include the proposed elimination of the container deposit and return provisions of the existing regulation.

Nevertheless, ARB believes that the commenters' statements that the recycling program does not provide any significant benefit in reducing emissions of global warming gases are incorrect. ARB acknowledges that recent data indicates used containers contain lower amounts of automotive refrigerant than initially anticipated (2-4% of the container volumes versus anticipated 20% of container volumes). However, the commenters cannot dispute that even at these lower levels of remaining refrigerant, the existing recycling program ensures these quantities of refrigerant are recaptured, instead of being vented to the atmosphere, which would occur if the recycling provisions were eliminated. Moreover, such quantities of recaptured refrigerant are not insignificant. ARB estimates that even accounting for the emissions associated with shipping returned containers from retailers to manufacturers, the recycling provisions

account for a net benefit of approximately 28,000 metric tons of carbon dioxide (CO₂) equivalents, which is equivalent to removing 6,000 cars from operating on highways assuming that an average gasoline-powered passenger car emits 4.6 tons of CO₂ per year.

3. Comment: Automakers are recognizing the damaging effects of HFC-134a and are trying to phase-out these refrigerants. In the meantime, we need to continue an aggressive recycling program to capture the auto refrigerants, and think that the proposed amendments will help to do so. (CAW)

Agency Response: We agree that the proposed amendments will enhance the recycling program and continue to capture automotive refrigerants.

4. Comment: While we understand that CalRecycle has raised concerns regarding the disposal of the cans, which they consider a hazardous waste, this is a very different issue from controlling global warming gases and should be undertaken as part of another rulemaking. Controlling the recycling of solid waste has been delegated by the legislature to CalRecycle and therefore, since the disposal of the refrigerant no longer has any significant effect on greenhouse gas emissions, it should be left to the agency which has that responsibility.

Even if CARB has the authority to regulate the disposal of the small can, the recycling program as it currently stands is extremely inefficient from an environmental and resource point of view based on the fact that the cans are used in California and then shipped across the country for recycling. Since there is so little refrigerant remaining in the [used] cans, there is little resource recovery for the manufacturers that would justify the current program from their end.

Further, the state currently deals, on a daily basis, with a large amount of household waste that is considered hazardous. The cans of refrigerant would represent a miniscule portion of this waste stream (we estimate less than 0.5 percent of the products designed are household hazardous waste) and therefore it is unclear why an inefficient stand-alone program focused on refrigerant cans is justified.” (ACA et al.)

Agency Response: No change was made in response to this comment. The Agency Response to Comments B.1 and 2 is incorporated by reference herein. The regulatory provisions establishing the refrigerant deposit and return program were established in the rulemaking action associated with the initial regulation for small containers of automotive refrigerant, and this comment therefore extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments. Nevertheless, ARB notes that this comment conflates the issue regarding the disposal of partially-filled *containers* of automotive refrigerant (excluding any automotive refrigerant stored in said containers) in landfills, with the separate and distinct issue regarding the provisions in the current regulation that require manufacturers to recover *automotive refrigerant* remaining in containers of refrigerant that have been purchased and used

by consumers, returned to retailers, and ultimately transferred back to manufacturers. The latter provisions require manufacturers to recover quantities of automotive refrigerant remaining in used containers by evacuating container contents to less than atmospheric pressure, but expressly **do not** establish any *requirements regarding the disposal of the evacuated containers*. Nevertheless, ARB understands that manufacturers have in fact been recycling evacuated containers to recover their scrap metal, instead of disposing the evacuated containers into landfills.

This comment therefore does not accurately state the essence of the existing regulatory requirements that require manufacturers to recover quantities of automotive refrigerant remaining in used containers. The ARB established those requirements as one of the components of the initial regulation, pursuant to the authority of the California Global Warming Solutions Act of 2006 (Assembly Bill 32, 2006), which authorizes and directs ARB to monitor and regulate sources of emissions of greenhouse gases that cause global warming.

To the extent the comment states or implies that the previously described provisions associated with the container deposit and return program extend to disposal of evacuated containers of automotive refrigerant (i.e., the steel or aluminum containers used to store the refrigerant), it is simply incorrect. As discussed above, the regulation only establishes requirements applicable to the automotive refrigerant stored in the containers.

Nevertheless, it should be noted that ARB staff worked with CalRecycle staff to develop the program in the regulatory action establishing the initial regulation to ensure that the program would incorporate the key characteristics of Extended Producer Responsibility, which include measurement & effectiveness, and transparency & accountability.

5. Comment: The Auto Care Association has offered to work with staff on a better solution of eliminating the container recycling program. Unfortunately we have been told that there is no interest in such discussions. We strongly oppose the confrontational process that ARB has employed in its development. (ACA et al.)

Agency Response: We disagree with the comment. ARB staff has worked extensively with the Auto Care Association, the California Automotive Warehouse Association, other industry organizations, and stakeholders to develop an efficient regulation. Since the August 25th, 2015 workshop, a series of meetings were held with the small can stakeholders as well as the organizations representing them, in order to get a better understanding of the refrigerant deposit and return program and the associated logistics. In addition, ARB staff has held individual meetings with retailers to better understand each retailer's container return process.

Moving forward, we intend to convene a workgroup with the stakeholders, including the container manufacturers, retailers, and community representatives to discuss implementing these amendments after they become effective under state law.

C. Consumer-Retailer Deposits

1. Comment: The \$10 consumer-retailer deposit serves to raise the initial cost of the containers for low income individuals who are likely using the product because they can't afford the higher cost of using a professional service to recharge their air conditioning system. While such action could have been justified due to the global warming reductions ARB thought it was achieving, the current information on the program effectiveness fails to demonstrate that the program provides any significant benefit in reducing emissions of global warming gases. (ACA et al.)

Agency Response: No change was made in response to this comment. The Agency Response to Comments B.1 and 2 is incorporated by reference herein. The regulatory provision regarding the \$10 consumer-retailer deposit (title 17, CCR section 95366(a)(2)) was established in the rulemaking action associated with the initially adopted regulation for small containers of automotive refrigerant, and this comment therefore extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments. Nevertheless, ARB notes that the \$10 consumer-retailer deposit is not a permanent expenditure, because retailers refund the \$10 consumer-retailer deposit to consumers when the consumers return used containers to retailers, and that data from manufacturers' and retailers' annual reports indicate that consumers return the majority of containers within a few weeks after purchasing the containers. The Agency disagrees with the commenter's statement that current information indicates the existing container deposit and return program provides no significant benefit in reducing emissions of GHG gases, for the reasons set forth in the Agency Response to Comments B.1 and 2.

2. Comment: We agree that the data ARB has obtained through implementation indicates that there is no need to increase the \$10 deposit and that it can be fixed at that amount. (CPSC et al.)

Agency Response: ARB appreciates the comment, but as stated in the Agency Response to Comment C.1, the regulatory provision regarding the \$10 consumer-retailer deposit (title 17, CCR section 95366(a)(2)) was established in the rulemaking action associated with the initially adopted regulation, and this comment therefore extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments.

D. Unclaimed Consumer-Retailer Deposits

Unclaimed Consumer-Retailer Deposits That Were Generated Under the Existing Regulation and That Are Retained by Retailers Prior to the Date the Proposed Amendments Will Become Effective Under State Law

1. Comment: We do not believe that any new changes should be adopted until the issue of the current unclaimed consumer deposits is resolved. It is unfair for ARB to expect industry to support any new changes to the regulation while trying to retroactively impose conditions on the use of the current unclaimed consumer deposits. (ACA et al.)

Agency Response: No change was made in response to this comment. As explained below, the amendments do not establish any requirements applicable to consumer-retailer deposits that were generated under the existing regulation and that have been retained by retailers prior to the date that the amendments will be effective under state law, and this comment therefore extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments.

ARB notes that the commenter attached to its written submission dated April 18, 2016 a copy of an ARB advisory entitled “Facts About Automotive Refrigerants: Retailer Requirements” (revised June 9, 2012), and a copy of an 8-page correspondence from Michael J. Conlon to Mr. Aaron Lowe dated April 15, 2016. The commenter refers to the ARB advisory in the third full paragraph on page 2 of its April 18, 2016 submission to support its assertion that the *current regulation* does not require retailers to transfer unclaimed consumer-retailer deposits to manufacturers, and is apparently also relying upon portions of the April 15, 2016 correspondence from Michael J. Conlon to Mr. Aaron Lowe that sets forth Mr. Conlon’s analysis regarding whether the *current regulation* requires retailers to return unclaimed consumer-retailer deposits to manufacturers or to use such unclaimed consumer-retailer deposits to fund consumer education (pages 1-6). To the extent the aforementioned documents and portions of documents are used by the commenter to support its interpretation of provisions of the existing regulation that are not being amended in this rulemaking action, they also extend beyond the scope of this rulemaking action.

The remaining portions of Mr. Conlon’s April 25, 2016 correspondence to Mr. Aaron Lowe (pages 6-8) set forth Mr. Conlon’s analysis regarding the commenter’s position that ARB should eliminate the existing provisions of the regulation that establish the container deposit and return program. As set forth in the Agency Response to Comments B.1 and 2, this comment extends beyond the scope of the rulemaking. Accordingly, to the extent that the aforementioned documents and portions of documents are used by the commenter to support its recommendation that ARB eliminate the container deposit and return program, those documents and portions of documents likewise extend beyond the scope of this rulemaking action.

Nevertheless, the Agency Response to Comment D.3 below is incorporated by reference herein. In implementing the existing regulation, ARB has obtained information indicating that retailers have been retaining unclaimed consumer-retailer deposits, instead of transferring those deposits to manufacturers (who must then expend those deposits on enhanced education and outreach programs to inform consumers of measures to reduce GHG emissions associated with do-it-yourself recharging of MVAC systems). ARB has accordingly determined that it needs to ensure that retailers commence transferring unclaimed consumer-retailer deposits to manufacturers, and that the provisions of the amendments needed to implement this requirement meet the requirements of Health and Safety Code sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39610, which collectively authorize ARB to monitor and regulate sources of greenhouse gas emissions that cause global warming, and to adopt regulations that achieve “the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from those sources or categories of sources, in furtherance of achieving the statewide greenhouse gas emissions limit.” The commenter has presented no legal argument that precludes ARB from establishing this requirement until such point in time as ARB and retailers ultimately resolve all issues arising from retailers’ retention of unclaimed consumer-retailer deposits that were generated under the existing regulation and that have been retained by retailers during the time period preceding the effective date of these amendments. Also, as explained below in the Agency Response to Comment D.3, the provisions of the amendments that require retailers to transfer unclaimed consumer deposits to manufacturers or to manufacturer designees only establish prospective requirements for retailers and manufacturers, and such provisions will therefore not affect nor be determinative of the pre-existing compliance obligations of manufacturers and retailers.

2. Comment: ARB staff should take actions to ensure the previous unclaimed deposits (i.e., unclaimed consumer deposits retained by retailers since the effective date of the initially adopted regulation) are transferred to manufacturers and used to fund enhanced consumer education programs in a timely fashion. (CPSC et al.)

Agency Response: No change was made in response to this comment. The Agency Response to Comment D.1 is incorporated by reference herein.

Provisions in Amendments That Require Retailers to Transfer Unclaimed Consumer-Retailer Deposits to Manufacturers

3. Comment: Due to the fact that the staff has labeled the use of unclaimed consumer deposits by retailers a “clarification,” it is not clear whether the staff intends to impose the new requirement on retailers to unclaimed deposits they are currently holding. It would be unfair to impose this requirement on the retailers retroactively. Therefore, any amendment should clearly state that it only applies to deposits received in sales transactions after the effective date of the rulemaking. (ACA et al.)

Agency Response: No change was made in response to this comment. The provisions of the amendments that require retailers to transfer unclaimed consumer-retailer deposits to manufacturers or their designees (title 17, CCR sections 95366(a)(4) and (a)(5)), to report the amounts of unclaimed consumer-retailer deposits that they collect and transfer to manufacturers or their designees (title 17, CCR section 95367(a)(1)), and to maintain those reports (title 17, CCR section 95369(b)) collectively only apply to unclaimed consumer-retailer deposits that are retained by retailers on or after the effective date of these amendments. This is evident from the text of the amendments. Specifically, title 17, CCR section 95366(a)(5) states, in pertinent part, that “if the amount of deposits that a retailer returns or refunds to consumers under section 95366(a)(3) exceeds the amount of deposits collected by that retailer under section 95366(a)(1) *during the time period beginning with (the effective date of this regulatory amendment) and ending December 31, (year of effective date of this regulatory amendment)*” (*emphasis supplied*). The amendments therefore only affect the future compliance obligations of affected parties, and do not affect the past legal obligations of parties’ past actions.

4. Comment: The requirement that retailers must return unclaimed consumer-retailer deposits to manufacturers every 90 days is an unworkable and inefficient program that conflicts with the reason for requiring the self-sealing valve. For starters, if consumers are being urged to keep the cans until they are empty, then pushing them to return the can in 90 days is conflicting. Such a situation might cause unnecessary venting of refrigerant from containers by consumers and could cost the retailer to pay two deposits: one when it is returned to the manufacturer after 90 days and one that the consumer demands when they do finally return the can after the 90 days has expired. We understand that staff is proposing to increase the time to 180 days for reports and deposit return requirements. While this would be an improvement, it is inefficient and burdensome on all parties involved. (ACA et al.)

Agency Response: Staff has accommodated this concern by extending the time period within which retailers must transfer unclaimed consumer-retailer deposits to manufacturers, and to report such transfers to ARB, from the initially specified 30 days after the end of the calendar quarter in which retailers have retained unclaimed consumer-retailer deposits for at least 90 days, to an annual basis. Staff also included a new provision in title 17, CCR section 95366(a)(5) to provide retailers an option to defer transferring unclaimed consumer-retailer deposits to manufacturers if the amount of deposits that retailers return or refund to consumers under section 95366(a)(3) exceed the amount of consumer-retailer deposits collected under section 95366(a)(1), during the first year that these amendments become effective under state law. Finally, staff also modified the labeling requirements in the associated Certification Procedures (section 2.3(B)(5)) to remove the initially proposed text “If container has refrigerant remaining after usage, return to retailer or retain for additional use until empty”, due to limited space available on the containers for any additional labeling, and regulatory requirements. All of the aforementioned

modifications were made as part of the first 15-day notice associated with this rulemaking action.

5. Comment: We still are opposed to the retailers being forced to send money to manufacturers for education in California. Similar to the entire recycling program, it is inefficient and burdensome on all parties involved. (ACA et al.)

The actual final regulation has got a lot of problems logistically on how the funds are going to be returned to the manufacturer. It could, as written, provide a disincentive to retailers to return those deposits to the consumer after the 90 day period expires. And I think that retailers, in order to keep their consumers happy, want to continue to return those consumer-retailer deposits (even when consumers return used containers past the 90 day period). (ACA et al.)

Agency Response: ARB disagrees with the first part of this comment. There are many more retailers of small cans of automotive refrigerant in California than manufacturers. Additionally, manufacturers must go through a certification process, which includes a requirement to develop consumer education materials, in order to sell their products in California, a requirement that retailers do not have, and are better situated to educate consumers on the products that they specifically make. Retailers typically market a wide number of various products, and furthermore, it is more efficient and effective to work and manage the smaller number of manufacturers who are already required to meet certification of their products than the larger number of retailers.

Although the existing regulation provides consumers a 90-day window to return a used can of automotive refrigerant back to a retailer in order to receive a full refund of the consumer-retailer deposit, ARB's data has shown that a vast majority of consumers have returned their used cans within the first 30 days. Moreover, the existing regulation currently provides that a retailer may elect to return a consumer-retailer deposit if more than 90 days have elapsed.

Nevertheless, staff has accommodated the commenter's concerns regarding inefficiency and impacts on affected parties by modifying the time periods for retailers to transfer unclaimed consumer-retailer deposits to manufacturers or their designees, to report the amounts of unclaimed consumer-retailer deposits that they collect and transfer to manufacturers or their designees, and to maintain those reports from a quarterly to an annual basis, which will provide retailers more flexibility in providing customer satisfaction by honoring late returns, as described in the Agency Response to Comment D.4.

6. Comment: We'd like to see the unclaimed deposits retained by the retailers, instead of requiring all that money to go back to manufacturers, and then manufacturers spending the money here in California. It would be more effective if retailers hold the deposits and then direct deposit funds to a destination that is agreed to by a work group that is established in cooperation with the Air Resources Board. I think

that would be a more efficient than sending the money back to the manufacturers, because the retailers are on the ground in California and have the best connection with the consumer. (ACA et al.)

It also should be recognized that some of these manufacturers could be overseas, which makes enforcement even more difficult for the Board. The retailers are here in California, operate in California, and do a lot of take-back programs, batteries, used oil, and I think they're in the best place to educate consumers. So we'd like to see that program instead of requiring all that money to go back to manufacturers, and then manufacturers spending the money here in California, that the retailers hold the deposits and work to have a fund, so that that money goes to improve the recycling program, which is in everybody's best interests to have as many cans come back as possible, until we come up with an alternative. (ACA et al.)

Agency Response: No change was made in response to this comment. The Agency Response to Comment D.5 is incorporated by reference herein. Currently, there are many more retailers than manufacturers in the California market. Four manufacturers are certified to sell small cans of automotive refrigerant in California but one manufacturer controls over 95% of the market. Meanwhile, there are over thirty retailers who currently sell small cans in California.

Nevertheless, ARB staff intends to continue to engage with all affected parties in implementing these amendments after the amendments become effective under state law.

In response to the comment that enforcing the amendments against overseas manufacturers may be difficult, see the Agency Response to Comment F.1.

7. Comment: Money collected from the consumers associated with these refrigerants can and should be recycled back to consumers to ensure that they know the requirements of the law and the opportunities associated with canister exchange. By ensuring that California consumers are beneficiaries of the money brought in from the program, as opposed to refrigeration retailers, California can double down on emission reductions while reducing overall program costs on society. This is no doubt what was intended in the original design of the regulation back in 2009, and it remains the proper application of the original design today. (EDF)

Agency Response: No change was made in response to this comment. However, ARB agrees with this comment and notes that the amendments modify section 95366(a)(4) to clarify that retailers must transfer consumer-retailer deposits that are not returned or refunded to consumers under section 95366(a)(3) to the manufacturer or its designee, and also modify section 95366(b)(5) to require manufacturers or their designees to ensure that unclaimed consumer-retailer deposits that retailers transfer to manufacturers under section 95366(a)(4) will accrue to accounts to be solely used for the purpose of enhanced consumer education programs or other programs or projects to reduce greenhouse gas emissions. These sections will help ensure that unclaimed

consumer-retailer deposits will be used to benefit consumers, as opposed to benefitting the retailers of small cans of automotive refrigerant.

E. Consumer Education Programs

Accounting for Unclaimed Consumer-Retailer and Retailer-Manufacturer Deposits and Guidance Regarding Consumer Education Programs or Measures to Reduce Greenhouse Gases.

1. Comment: A paragraph should be added that clarifies how the process will work for review, approval, and reconciliation of funds used by manufacturers for consumer education. The current wording is vague and provides little guidance as to what kinds of consumer education programs will be acceptable. (ACA et al.)
2. Comment: We ask that ARB provide more details on how they envision the process for review and approval of consumer education plans. The current proposal is vague and provides little guidance on what will be acceptable and what process will be followed to ensure alignment regarding plans and timing for that communication. (SB)

Agency Response to Comments E.1 and 2: No change was made in response to these comments. The comments that the requirements regarding the review and approval of consumer education plans are vague extend beyond the scope of this rulemaking because those requirements were established in the rulemaking action associated with the initial regulation, and this comment therefore extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments.

The ARB disagrees with the comments that assert the amendments applicable to the reconciliation of funds used by manufacturers to fund consumer education programs are vague and require additional clarification, because the applicable criteria are clearly set forth in the amendments as follows:

Section 95366(b)(5) requires manufacturers to report and account for how funds attributable to unclaimed retailer-manufacturer and retailer-distributor deposits, and unclaimed consumer-retailer deposits that retailers transfer to manufacturers under section 95366(a)(4), will accrue to designated accounts, and also requires manufacturers to report how such account funds are spent in accordance with section 95367(a)(5).

Section 95367(a)(5) requires manufacturers to report the amounts of deposits transferred from retailers under section 95366(a)(4), and the amounts of deposits they collect under section 95366(b)(1) that are not refunded to retailers or distributors under section 95366(b)(4), and to provide an accounting of how those funds were spent to enhance consumer education or other programs, projects, and measures reducing greenhouse gas emissions in the previous calendar year.

Section 95367(a)(1) establishes a new requirement that retailers must include in their annual reports the amounts of unclaimed consumer-retailer deposits that are collected in the calendar year, and the amount of such funds that are transferred to manufacturers under section 95366(a)(4). Sections 95367(a)(5) and (6) require manufacturers to provide annual reports to the Executive Officer detailing the amounts of deposits transferred from retailers under section 95366(a)(4) and the amounts of deposits they collect under section 95366(b)(1) that are not refunded to retailers or distributors under section 95366(b)(4), and to provide an accounting and description of how those funds were spent on each component of an enhanced consumer education program for both the prior year and how it anticipates to spend funds for the upcoming year. Reporting will be required to account for any discrepancies between a manufacturer's anticipated spending and actual spending.

ARB will review both retailer and manufacturer records to ensure unclaimed deposits are accounted for and are consistently reported between retailer and manufacturer reports.

3. Comment: Of critical concern is the fact that this is a seasonal business with most of the sales to consumers in the late spring and through summer and almost no sales in the fall and winter months. All consumer education programs should also take into account this seasonality. We do not want to be spending money on a program at a time when consumers are not receptive to that message. (SB)

Agency Response: No change was made in response to this comment. This comment extends beyond the scope of the rulemaking because the requirements regarding consumer education programs were established in the rulemaking action associated with the initial regulation, and this comment therefore extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments.

Nevertheless, manufacturers may account for the seasonality of product sales in developing their annual proposed consumer education programs for ARB Executive Officer's approval.

4. Comment: We believe the proposed amendments that allow for additional program options for the education of consumers, with ARB's approval, are important to reaching more consumers who are unaware of the program. We also encourage the Board to engage with a broad stakeholder group, including local governments, industry, and NGOs to provide input on how these funds are used in the development of consumer education by the manufacturers. (CPSC et al.)

Agency Response: ARB appreciates the comment supporting the enhanced consumer education program. Moving forward, we intend to convene a workgroup with a broad stakeholder group, including the container manufacturers, retailers, local governments,

and NGOs to discuss issues related to the additional program options after the amendments become effective under state law.

5. Comment: As demonstrated by the lower than expected return rates for used containers, nearly 25 percent lower than expected, there is much work to be done to ensure consumers and technicians are aware of the requirements and incentives that apply to small containers of automotive refrigerants. (EDF)

Agency Response: ARB acknowledges that additional efforts to ensure consumers and technicians are aware of the requirements applicable to small containers of automotive refrigerant are needed, but believes that the provisions of the amendments that will ensure retailers will begin transferring unclaimed consumer-retailer deposits to manufacturers (title 17, CCR section 95366(a)(4)) will act in conjunction with other provisions of the amendments that specify that manufacturers must expend those unclaimed consumer-retailer deposits on consumer education programs or other programs to reduce greenhouse gas programs (title 17, CCR section 95366(b)(5) to increase user awareness of the regulation's requirements and incentives.

6. Comment: EIA is particularly supportive of the proposed amendments to expand the scope of the Regulation to allow funds to be spent by manufacturers on "other greenhouse gas reduction programs, projects or measures, as directed by ARB." Below are some additional education measures and projects to support research, evaluation, and promotion of low-GWP refrigerants that would have significant impacts toward avoiding greenhouse gas emissions in the motor vehicle air conditioning (MVAC) sector and can also support refrigerant emission reductions from other air conditioning and refrigeration sectors. These include expanded research to support the updating of U.S. standards and codes, as well as enhanced education to avoid incorrect use of HFC-134a to recharge new low-GWP MVAC systems, to enable a smooth transition for "do-it-yourself" (DIY) air-conditioning repairs and servicing to low-GWP refrigerants. (EIA)

7. Comment: ARB should consider quickly implementing additional consumer education programs providing information on the different technical, environmental, and safety issues when using low-GWP refrigerants which may include both HFO-1234yf and R-744 instead of HFC-134a. (EIA)

8. Comment: ARB should quickly implement programs to educate consumers and "do-it-yourself" car owners in particular on best practices for servicing cars with these new refrigerants, warning them not to charge systems using HFO-1234yf or R-744 with R-134a. (EIA)

9. Comment: There is an urgent need to update standards and codes, which stand as the biggest impediment to U.S. market penetration of low-GWP and HFC-free technologies already widely in use in other major markets. Funds from this small cans program would be well spent if directed to projects that support additional research and testing to demonstrate the safety of low-GWP refrigerants, particularly

with a focus on factors affecting charge size thresholds for hydrocarbons and other low-GWP natural refrigerants for both air conditioning and refrigeration. (EIA)

Agency Response to Comments E.6 through 9: ARB appreciates the commenter's support for the provisions of the amendments that provide manufacturers greater flexibility to spend unclaimed consumer-retailer, unclaimed manufacturer-retailer, and unclaimed manufacturer-distributor deposits on projects or programs for reducing greenhouse gases, in addition to the enhanced education programs specified in the regulation, and also appreciates EIA's suggestions regarding programs and projects to reduce greenhouse gas emissions. ARB welcomes and invites EIA's participation in future cooperative efforts to identify and develop educational measures and programs such as those identified in the comment.

F. Overseas Manufacturers

1. Comment: We are not clear what will happen if a manufacturer is overseas. Will that manufacturer be complying with the consumer education requirements? There is little guidance in the regulation to address this issue. (ACA et al.)

Agency Response: All manufacturers of small containers of automotive refrigerant must comply with each of the regulatory requirements in title 17, CCR sections 95360 through 95370, whether they are located or headquartered in the United States or overseas. For example, title 17, CCR section 95360 provides, in pertinent part, that the regulation for small containers of automotive refrigerant "applies to any person who ... sells, supplies, offers for sale, advertises, manufactures for sale, ... imports, exports, or introduces for sale in California any automotive refrigerant in a small container that is used or intended for use to charge motor vehicle air conditioning systems."

G. Container Label Language

1. Comment: Auto Care and CARE do not support the current labeling provisions in the proposal. The can labels already contain significant instructions in fairly small type on the proper use of the can, the refrigerant, and warnings on potential misuse and proper disposal. We do not believe that any additional labeling will be effective in communicating information to consumers as it would require either using even smaller type or eliminating other necessary information. Users are only going to read so much. If there is too much information on the can, they are more likely to ignore all of it or be confused. We understand that ARB is going to propose to significantly reduce the amount of added verbiage for the label. While we would prefer no additions, this proposal would be a significant improvement. (ACA et al.)
2. Comment: We do not support the label provisions in the proposal. We believe that the existing communication and warning language is sufficient and any added language will actually further confuse consumers as it would require very small type or elimination of other necessary information. We understand that the ARB is

considering proposing a significant reduction in the amount of additional required verbiage to be included. While we would prefer no additional language, the reduction is much preferred and we believe it is a manageable change. (SB)

Agency Response to Comments G.1 and 2: Staff has accommodated this concern by modifying the labeling requirements (Section 2.3(B) of the Certification Procedures for Small Containers of Automotive Refrigerant) as part of the first 15-day notice for this rulemaking action, to remove the initially proposed text “If container has refrigerant remaining after usage, return to retailer or retain for additional use until empty”, due to limited space on containers and to ensure consistency with the remaining regulatory requirements.

3. Comment: The requirement to have additional language in both English and Spanish included on the label forbidding venting the cans and encouraging consumers to return the cans to retailers for recycling after usage or retain to use until they are empty will provide an additional opportunity to educate the consumer. (CPSC et al.)

Agency Response: ARB appreciates the comment supporting additional labeling requirements. The related provision Section 2.3(B) of the Certification Procedures for Small Containers of Automotive Refrigerant was further modified due to limited space available on containers and to ensure consistency with the existing regulatory requirements. Label language regarding venting has been changed from: “Do not vent contents to atmosphere;” to “Do not vent;” to save space on a label that is crowded with other language and instructions. Label language stating “if container has refrigerant remaining after usage, return to retailer or retain for additional use until empty” has been removed in its entirety. This language was found to be confusing as it was asking consumers to retain the used can instead of returning the used can, which is against the primary intent of the regulation. The requirement that the label statements be provided in both English and Spanish was not modified.

H. Sell-Through Period

1. Comment: Auto Care and CARE further urge that if the labeling requirement moves forward, the Board does not require a sell-through period for retailers. This would be unnecessarily costly to manufacturers and retailers, requiring retailers to return the unused cans to the manufacturer. Instead, we would propose that there be a manufacture-through date allowing for an orderly transition and avoiding the emissions generated by having to return the unsold cans to the manufacturer. The Board has told us that they are in agreement on this issue, which we appreciate. (ACA et al.)
2. Comment: We further urge ARB to not require a sell through period for any required label changes but rather a manufactured through date. We understand that ARB is in agreement with a manufacture through date. Further we understand that ARB is considering up to a one year period for the transition. A one year transition period is

manageable assuming we can manage the conversion outside of the busy production season so as to avoid the added complexity associated with coordinating a label change in the middle of the peak production months. (SB)

Agency Response to Comments H.1 and 2: Staff accommodated this comment during the first 15-day notice for this rulemaking action by replacing the initially proposed sell-through period with a provision that exempted small containers of automotive refrigerant that are packaged or manufactured for sale, supply, or offer

for sale in California, from the new container labeling requirements until December 31, 2017.

In response to a comment submitted during the first 15-day notice for this rulemaking that the proposed revisions to title 17, CCR section 95364.1 arising from the 15-day modifications could be interpreted to eliminate provisions exempting manufacturers and packagers from complying with the container labeling requirements specified in Section 2.3(B)(4) of the Certification Procedures for Small Containers of Automotive Refrigerant until December 31, 2017, and could further be interpreted to prevent the sale of non-complying containers by manufacturers and California retailers after December 31, 2017, staff subsequently proposed additional modifications during the second 15-day notice for this rulemaking that clarify that the amendments to title 17, CCR section 96364.1 only apply to small containers of automotive refrigerant that are either: (1) manufactured for sale or (2) packaged for sale in California during the time period beginning on the effective date of the amendments and ending December 31, 2017.

COMMENTS PRESENTED DURING THE FIRST 15-DAY COMMENT PERIOD

During the first 15-day supplemental comment period, the Board received written comments from:

Commenter	Affiliation
Lowe, Aaron	Auto Care Association Coalition for Auto Repair Equality California Automotive Wholesalers Association (ACA et. al)

A. Comments of Support

1. Comment: Section 95366(a)(4). We appreciate the decision to permit deposits to be transferred on an annual basis rather than quarterly. We think that this makes much more sense and will reduce the burden on retailers and manufacturers. (ACA et al.)
2. Comment: Section 95366(a)(5). We further appreciate the ability for retailers, during the first year, to defer transferring unclaimed consumer-retailer deposits to

manufacturer if the amount of the deposits that retailers return or refund to consumer exceeds the amount of deposits collected. (ACA et al.)

3. Comment: Sections 95366(b)(5), (6), and (7). The associations support the addition of the term “or its designee” to the regulation such that a manufacturer is allowed to designate a third party to manage the enhanced education program. We believe that this flexibility will provide more efficient and effective use of the funds. (ACA et al.)
4. Comment: Section 95367(a).The associations support this revision that provides additional time to file reports on the outreach plan. (ACA et al.)
5. Comment: Section 95367(b). The associations support the fixing of the deposit at \$10. (ACA et al.)
6. Comment: Section 95367(a)(1) and (5). The associations support this change and the move to annual reporting over quarterly which we believe is unnecessary.
7. Comment: Section 95367(a)(6). The association appreciates the added guidance this revised section of the regulation will provide manufacturers in developing their reports for ARB regarding their consumer education plans. (ACA et al.)
8. Comment: Section 95369(f). The associations support the revision to permit a designee to provide reports on how unclaimed deposits money was spent. As we stated above, this approach provides needed flexibility to manufacturers and we believe will ultimately result in a more effective and efficient consumer education program. (ACA et al.)
9. Comment: Section 2.3(B)(4) of the Certification Procedures: The association appreciates the efforts of the staff to reduce the wording changes necessary for the label. While we would prefer no additional labeling requirement, the change designated in this section is much preferable to the original proposal and will provide better visibility for the message with consumers. (ACA et al.)
10. Comment: Section 2.3(A)(8) of the Certification Procedures: The associations strongly support the elimination of these wording requirements based on the already extensive amount of wording already required on the cans. (ACA et al.)

Agency Response to Comments A.1 through 10: No change was made in response to these comments as they do not raise any objections or recommendations directed to the proposed amendments set forth in this notice of availability of public availability of modified text. Nevertheless, ARB appreciates the expressions of support.

B. Manufacturing of Product with Modified Labels

1. Comment: In Section 95364.1, the wording in the 15-day changes appears to revoke the exemption as of December 31, 2017 and could be construed to prevent

the sale of the non-complying cans by both manufacturers and California retailers after December 31, 2017. We urge that the wording be revised to resolve any ambiguities and ensure that the rule only applies to the manufacturing of the product. (ACA et al.)

Agency Response: The agency agrees with this comment and has modified the language in this section in the second 15-day notice and subsequently proposed additional modifications during the second 15-day notice for this rulemaking that clarify that the amendments to title 17, CCR section 96364.1 only apply to small containers of automotive refrigerant that are either: (1) manufactured for sale or (2) packaged for sale in California during the time period beginning on the effective date of the amendments and ending December 31, 2017.

The proposed revisions, when read together with the initial amendment to 95362(c) and existing section 95362(a), clarify that these affected small containers of automotive refrigerant are only exempted from the container labeling requirements as specified in Section 2.3(B)(4) of the “Certification Procedures for Small Containers of Automotive Refrigerant,” adopted on July 20, 2009, as last amended on [adoption date], until December 31, 2017, but may be sold in California on or after December 31, 2017.

C. Elimination of the Container Deposit/Return Program

1. Comment: We continue to believe that the return and deposit program is unnecessary, costly, and contrary to the effort by the Board to reduce greenhouse gas emissions. Requiring retailers to send nearly empty cans across the country for recycling is inefficient and a major waste of resources. We agree with ARB’s original direction to eliminate the program and we hope that the board will reconsider this direction in the very near future. (ACA et al.)

Agency Response: No change was made in response to this comment, as it does not raise any objections or recommendations directed to the proposed amendments set forth in this notice of availability of public availability of modified text. Nevertheless, see the Agency Response to Comments B.1 and 2 submitted during the 45-day comment period.

D. Previous Unclaimed Deposits

1. Comment: The associations also want to point out once again that the requirements that retailers forward unclaimed deposits to the manufacturer are an entirely new mandate that was not in the original rule. Despite the staff’s insistence, there is nothing in the current rule that would require any unused deposits that have been collected by California retailers to be returned to manufacturers. (ACA, et al.)

Agency Response: No change was made in response to this comment, as it does not raise any objections or recommendations directed to the proposed amendments set forth in this notice of availability of public availability of modified text. Nevertheless, see

the Agency Response to Comments D.1 and 2 were submitted during the 45-day comment period.

E. Retailers' Retention of Unclaimed Deposits

1. Comment: We further take issue with the absence of any consideration for the money that will be spent by retailers for implementing this program. Specifically, retailers will continue to need to implement consumer and employee education programs, maintain proper records, and arrange storage and shipping of the empty containers. Under the current rules these costs were covered by the unclaimed deposits. However, these funds must now be returned to the manufacturers and therefore all of these costs will need to be absorbed by the retailer. We think this is a shortsighted approach that is counterproductive to the goal of improving consumer participation in the recycling program. (ACA et al.)

Agency Response: No change was made in response to this comment as this extends beyond the scope of the rulemaking because the requirements regarding consumer education programs were established in the rulemaking action associated with the initial regulation. This comment, therefore, extends beyond the scope of this rulemaking action because it does not raise any objections or recommendations directed to the proposed amendments. Nevertheless, see the Agency Response to Comments D.1 through 7 submitted during the 45-day comment period.

COMMENTS PRESENTED DURING THE SECOND 15-DAY COMMENT PERIOD

During the second 15-day supplemental comment period, the Board received written comments from:

Commenter	Affiliation
Hamel, Dave	Not listed (DH)
Sanborn, Heidi	California Product Stewardship Council (CPSC)

A. Comments of Support

1. Comment: To protect public health and environmental quality, we support ARB staff efforts to develop clear and well thought out proposed amendments to the current Regulations for Small Containers of Automotive Refrigerant. The ARB staff has been thorough in the report and rationale for the proposed changes and we support the ARB Board's adoption of the proposed amendments. (CPSC)

Agency Response: ARB appreciates support for the proposed amendments.

B. Environmental Benefits

1. Comment: Please abolish the special small can requirements for CFC's that are part of California law. The existing system in California increases the emissions of these chemicals, and increases cost to the end user without environmental benefit. (DH)

The unintended consequence of this legislation is that private parties purchase the refrigerant they need when out of state, to avoid the CA deposit and the fiddly fixtures needed for the CA compliant cans on recharging equipment. Commercial shops buy the material in bulk containers that do not have deposits. The real intent of this legislation is in my opinion an attempt to discourage or eliminate home mechanics from doing this work. Many cans are returned partially full, to get the deposit back before it expires, which wastes chemical. Some people I have encountered empty the cans prior to return or over charge the systems. (DH)

The cost of 134a in CA is significantly above the cost out of state due to the special packaging. A can is less than \$6 on sale anywhere except CA. Here it runs \$12 plus the deposit. I do my own refrigeration work on my cars due to problems I have had with shops conducting this work, and will continue to do so as long as I can. I do not believe the intent of this program is being achieved, and the CA EPA mission will be enhanced if this program is realistically evaluated and revised to make sense. (DH)

Agency Response: No change was made in response to this comment, as it does not raise any objections or recommendations directed to the proposed amendments set forth in this notice of availability of public availability of modified text.

Nevertheless, staff disagrees that the regulation is not environmentally beneficial and the intent of this regulation is not achieved. ARB acknowledges recent data indicates that used containers contain lower amounts of automotive refrigerant than initially anticipated (2-4% of the container volumes versus anticipated 20% of container volumes). However, the commenter cannot dispute that even at these lower levels of remaining refrigerant, the existing recycling program ensures such quantities of refrigerant are recaptured, instead of being vented to the atmosphere, which would occur if the recycling provisions were eliminated. Moreover, such quantities of recaptured refrigerant are not insignificant. ARB estimates that even accounting for the emissions associated with shipping returned containers from retailers to manufacturers, the recycling provisions account for a net benefit of approximately 28,000 metric tons of CO₂ equivalents, which is equivalent to removing 6,000 cars from operating on highways assuming that an average gasoline-powered passenger car emits 4.6 tons of CO₂ per year.

In addition, our research indicates that out of state online stores which offer small cans for sale will charge the \$10 deposit based on the shipping zip code supplied by the consumer. The cost of a small can of automotive refrigerant in and outside California is comparable.

IV. PEER REVIEW

Health and Safety Code Section 57004 sets forth requirements for peer review of identified portions of rulemakings proposed by entities within the California Environmental Protection Agency, including ARB. Specifically, the scientific basis or scientific portion of a proposed rule may be subject to this peer review process. ARB has determined that this rulemaking amendment does not contain a scientific basis or scientific portion subject to peer review, and thus no peer review as set forth in Section 57004 was needed.