

## UPDATED INFORMATIVE DIGEST

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

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

**Background and Effect of the Proposed Rulemaking:** The Air Resources Board (ARB or Board) initially adopted the Regulation for Small Containers of Automotive Refrigerant (regulation) in January 2009 to reduce greenhouse gas (GHG) emissions associated with do-it-yourself servicing of 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 therefore proposed 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 to ensure the retailers’ compliance with this provision.

ARB staff also proposed 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 proposed 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 could be depleted prior to the introduction of the product with new labels.

**Description of Regulatory Action:** At its April 22, 2016 public hearing, the Board approved for adoption the amendments to the California Code of Regulations, title 17, sections 95362, 95366, 95367, and 95369, and to Section 2.3(B) of the incorporated document “Certification Procedures for Small Containers of Automotive Refrigerant,” and the adoption of new sections 95364.1 and 95367.1, as modified by staff’s suggested modifications and presented to the Board at the April 22, 2016 hearing.

The amendments and new regulatory sections: add details to the requirement that retailers must transfer unclaimed consumer-retailer deposits to the manufacturer or its designee; establish new quarterly recordkeeping and reporting requirements to ensure that retailers comply with this obligation; expand the scope of projects that manufacturers or their designees may fund with unclaimed consumer-retailer deposits and unclaimed manufacturer-retailer and manufacturer-distributor deposits; fix the consumer-retailer deposit at \$10; eliminate the provisions for increasing or decreasing the consumer-retailer deposit; allow a one-year sell-through for small containers of automotive refrigerant packaged or manufactured between January 1, 2010 and the effective date of the proposed amendment; and require additional language on labels for small containers of automotive refrigerant that forbids venting refrigerant into the atmosphere, and that instructs consumers to either return non-empty containers to retailers or retain and use such containers until they are empty.

At the hearing, staff presented, and the Board approved for adoption, modified regulatory language developed in response to comments received since the Initial Statement of Reasons was released to the public on March 1, 2016. These modifications include: replacing the initially proposed one-year sell-through requirement with a requirement that any small container of automotive refrigerant manufactured more than one year after the effective date of the amendments that is not labeled in compliance with the proposed new container labeling requirements may not be sold in California; changing the frequency of requirements for retailers to transfer unclaimed consumer-retailer deposits to manufacturers or their designees, and to report unclaimed consumer-retailer deposits that retailers collect and that are transferred to manufacturers or their designees from quarterly to semiannually; and to limit the proposed container labeling requirements to only require language that forbids the venting of refrigerant into the atmosphere.

Subsequent to the hearing, staff proposed modifications to the regulatory text and the incorporated certification procedures that largely clarify the regulatory provisions and provide manufacturers and retailers additional compliance flexibility. The most significant of these post-hearing modifications include: substituting the initially proposed one-year sell-through requirement with a provision exempting small containers of automotive refrigerant that are packaged or manufactured for sale, supplied, or offered for sale in California from the proposed new container labeling requirements until December 31, 2017; modifying the retailers' requirement to transfer unclaimed consumer deposits to the manufacturer or its designee from quarterly to annually, along with the associated reporting and recordkeeping requirements; and added a new subsection allowing manufacturers to specify a third party entity for the purposes of collecting, managing, and spending the unclaimed container deposits and also specified reporting and planning requirements for such third party entities.

The above described post-hearing modifications were described in a notice of public availability of modified text noticed on August 26, 2016. After considering public comments that were submitted in response to that notice of public availability of modified text, further modifications to the regulatory text were proposed to clarify that

the provision exempting small containers of automotive refrigerant that are packaged or manufactured for sale, supply, or offer for sale in California from the proposed new container labeling requirements until December 31, 2017 only applies to small containers of automotive refrigerant that are either: (1) manufactured for sale, or (2) packaged for sale in California during the time period beginning on the effective date of the amendments and ending December 31, 2017.

All the aforementioned modifications were released for a public comment period in the first set of 15-day changes (First Notice) noticed on August 26, 2016. After consideration of the public comments received in response to the First Notice, additional modifications of the regulatory text were released for another public comment period (Second Notice) on October 11, 2016 to clarify that the proposed 15-day modification that substituted the initially proposed one-year sell-through requirement with a provision exempting small containers of automotive refrigerant that are packaged or manufactured for sale, supplied, or offered for sale in California from the proposed new container labeling requirements until December 31, 2017, only applies to small containers of automotive refrigerant that are either: (1) manufactured for sale, or (2) packaged for sale in California during the time period beginning on the effective date of the amendments and ending on December 31, 2017, and that such affected small containers of automotive refrigerant are only exempted from the container labeling requirements specified in Section 2.3(b)(4) of the "Certification Procedures for Small Containers of Automotive Refrigerant," but may be sold in California on or after December 31, 2017.

### **Documents Incorporated by Reference**

Certification Procedures for Small Containers of Automotive Refrigerant, adopted July 20, 2009, and last amended on January 17, 2017.

**Comparable Federal Regulations:** The Federal Clean Air Act (CAA) and United States Environmental Protection Agency (U.S. EPA) regulations regulate certain aspects of the usage of non-ozone depleting refrigerants in MVAC systems. Section 608 of the CAA includes requirements applicable to refrigerant use during stationary heating, ventilation, and air conditioning servicing. U.S. EPA recently adopted regulations to implement Section 608 that require manufacturers to install self-sealing valves on all small containers of automotive refrigerant sold in the United States, beginning January 1, 2018. However, the amended California regulation is more stringent than comparable federal regulations because it also contains container deposit and return provisions to ensure that partially filled containers are evacuated of all remaining refrigerant before being recycled and destroyed, whereas the federal regulations do not. Furthermore, the California regulation required small containers to have self-sealing valves beginning January 1, 2010.

Section 609 of the federal Clean Air Act includes requirements specific to refrigerant use during MVAC servicing. Section 609(e) of the federal Clean Air Act (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 that 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 September 26, 2016 U.S. EPA made changes to Section 608 that would include a manufacturer's requirement to install self-sealing valves on all small containers of automotive refrigerant sold in the United States.