

State of California
AIR RESOURCES BOARD

**PROHIBITIONS ON USE OF CERTAIN HYDROFLUOROCARBONS IN STATIONARY
REFRIGERATION AND FOAM END-USES**

Resolution 18-14

March 23, 2018

Agenda Item No.: 18-2-9

WHEREAS, the Legislature enacted the California Global Warming Solutions Act of 2006, Assembly Bill 32 (AB 32, Nuñez, Stat. 2006, ch 488) in the Health and Safety Code section 38500 et seq., which declares global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California;

WHEREAS, section 38510 of the Health and Safety Code designates the California Air Resources Board (CARB or Board) as the state agency charged with monitoring and regulating sources of greenhouse gas (GHG) emissions that cause global warming in order to reduce such emissions to 1990 emission levels by 2020 and maintain a statewide GHG emissions limit, while seeking continuing GHG emissions reductions;

WHEREAS, section 38560 of the Health and Safety Code directs the Board to adopt rules and regulation in an open public process to achieve the maximum technologically feasible and cost-effective GHG emissions reductions from sources or categories of sources, subject to the criteria and schedules specified in Part 4 of Division 25.5 of the Health and Safety Code;

WHEREAS, section 38562 of the Health and Safety Code provides the Board with continuing authority to adopt additional regulations and revise existing regulations to further the provisions of Division 25.5 of the Health and Safety Code;

WHEREAS, the Legislature enacted Senate Bill 32 (SB 32, Pavley, Stat. 2016, ch. 249) at section 38566 of the Health and Safety Code requiring the Board to ensure that California's statewide GHG emissions are reduced to at least 40 percent below 1990 levels by 2030;

WHEREAS, section 38580 of the Health and Safety Code requires the Board to monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market based compliance mechanism adopted under Division 25.5 of the Health and Safety Code;

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

WHEREAS, the Legislature enacted Senate Bill 605 (SB 605, Lara, Stat. 2014, ch. 523) adopting section 39730 of the Health and Safety Code, requiring the Board to identify measures to reduce short-lived climate pollutants (SLCPs);

WHEREAS, the Legislature enacted Senate Bill 1383 (SB 1383, Lara, Stat. 2016, ch. 395) in section 39730.5 of the Health and Safety Code, requiring California to reduce emissions of hydrofluorocarbons (HFCs) to 40 percent below 2013 levels by 2030, and requiring and further authorizing CARB to approve and begin implementing the Short-lived Climate Pollutant Strategy (SLCP Strategy) and the measures identified in the SLCP Strategy;

WHEREAS, CARB adopted its SLCP Strategy in March 2017, which identified reducing HFCs as an important part of SLCP reduction efforts and calls for a reduction in HFCs by 2030;

WHEREAS, section 41511 of the Health and Safety Code authorizes the Board to adopt rules and regulations to require the owner or operator of any air pollution emission source to take reasonable actions for the determination of the amount of such emission from such source;

WHEREAS, HFCs are synthetic fluorinated gases (F-gases) containing hydrogen, fluorine, and carbon, that are used in a variety of applications, including refrigeration, air-conditioning, foam blowing, solvents, aerosols, and fire suppression;

WHEREAS, HFCs are powerful climate forcers that remain in the atmosphere for a much shorter period of time than longer-lived climate pollutants, such as carbon dioxide, but are more potent when measured in terms of global warming potential (GWP), which can be hundreds, or even thousands of times greater than carbon dioxide;

WHEREAS, HFCs are the primary substitutes for ozone-depleting substances, such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs);

WHEREAS, HFCs are the fastest growing source of GHG emissions in California and the world;

WHEREAS, HFCs are regulated at a national level simultaneously;

WHEREAS, the federal Significant New Alternatives Policy (SNAP) program is authorized by section 612 of the federal Clean Air Act (42 U.S.C. § 7671k). Rules 20 (40 CFR Part 82, Subpart G, Appendix U) and 21 (40 CFR Part 82, Subpart G, Appendix V) implement section 612 of the federal Clean Air Act;

WHEREAS, section 612 of the federal Clean Air Act authorizes the U.S. Environmental Protection Agency (U.S. EPA) to require manufacturers to stop using listed chemicals and replace them with listed safe substitute substances;

WHEREAS, on August 8, 2017, the United States Court of Appeals, District of Columbia Circuit issued a decision in *Mexichem Fluor, Inc. v EPA* (D.C. Cir. 2017) 866 F. 3d 451, vacating Rule 20 of the federal SNAP program to the extent it requires manufacturers to replace HFCs with a substitute substance. On January 26, 2018, the Court denied petitions for en banc rehearing;

WHEREAS, SNAP Rule 21, which also prohibits high-GWP HFCs in new equipment, could be affected by the same court decision and partially vacated to the same extent as Rule 20;

WHEREAS, legal and regulatory proceedings continue at the federal level, but it appears that the SNAP program may be unable to deliver the reductions CARB anticipated under current law;

WHEREAS, CARB was relying, in substantial part, on the implementation and enforcement of U.S. EPA's SNAP program, Rules 20 and 21, to meet California's emissions reduction mandates under AB 32, SB 32, and SB 1383;

WHEREAS, continuing legal uncertainty over the status of federal emissions reductions rules, the importance of providing regulatory certainty, and the need to ensure California's science-based targets are met, renders it critical to develop additional state law controls for HFCs that can ensure reductions that were formerly attributed to the SNAP program can be secured;

WHEREAS, the federal Clean Air Act explicitly preserves state law authority to promulgate emissions controls rules (42 U.S.C. § 7416);

WHEREAS, after research and consultation with stakeholders, staff has developed the proposed regulation "Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration and Foam End-Uses," as set forth in Appendix A to the Initial Statement of Reasons (ISOR or Staff Report), released to the public on January 30, 2018;

WHEREAS, the proposed regulation would place certain prohibitions on the sale, use, installation, or entrance into commerce of certain HFCs in stationary refrigeration and foam end-uses, and imposes a recordkeeping and disclosure statement requirement, ensuring no interruption in the reductions that were anticipated from these sectors under the SNAP program, and including important improvement to enforceability and reporting;

WHEREAS, the proposed regulation is based on an extensive analysis demonstrating that significant HFC emissions reduction from retail food refrigeration, vending machine, and specific foam end-uses may be cost-effectively achieved;

WHEREAS, staff has taken considerable steps to ensure that the proposed regulation is designed to complement and support compliance with federal regulatory efforts;

WHEREAS, staff conducted a public workshop, teleconferences, and in-person meetings with stakeholders during the regulatory development process;

WHEREAS, the proposed regulation and Staff Report for the proposed regulation have been circulated and made available for public comment for at least 45 days;

WHEREAS, the proposed regulation aims to reduce the impacts of climate change, which would otherwise be expected to exacerbate or create environmental injustice. There are no known negative environmental justice impacts that have been identified with regard to the proposed regulation;

WHEREAS, reductions of SLCPs have important public health benefits in communities (including disadvantaged communities) affected by climate change;

WHEREAS, the HFC regulations already in place in California, though not sufficient to control all HFC emissions, demonstrate that effective regulation of the industry can substantially and effectively control emissions;

WHEREAS, staff estimates that the proposed regulation would reduce HFC emissions by the equivalent of approximately 3.4 million metric tons of carbon dioxide equivalent (MMTCO_{2e}) per year by 2030;

WHEREAS, other efforts are underway by staff to further control HFC emissions;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; California Code of Regulations, tit. 14, § 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, tit. 17, §§ 60000-60007);

WHEREAS, staff has determined the proposed regulation is exempt from CEQA under California Code of Regulations, title 14, section 15308 ("Class 8" exemption: Actions Taken by Regulatory Agencies for Protection of the Environment) because the record evidence shows that the regulation will enhance the environment by better protecting the public from health impacts associated with climate change, the regulatory process involves procedures for protection of the environment, and the regulation will not result in any significant adverse environmental impacts as described in Chapter VI of the Staff Report;

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

WHEREAS, the Board finds that:

HFCs are powerful climate forcers that are more potent in terms of their GWP than carbon dioxide and are the fastest growing source of GHG emissions in California and the world;

California has specific legal mandates to reduce GHG emissions and more specifically HFC emissions by 40 percent below 2013 levels by 2030;

The proposed regulation adopts a list of prohibited substitutes and prohibition on their sale, use, installation, or entrance into commerce, of listed substitutes, and requires manufacturers of retail food refrigeration, vending machines, and certain foam end-uses to keep records and provide a disclosure statement on invoices;

The proposed regulation is necessary to meet California's legal mandates; reduce HFC emissions; prevent industry backsliding in light of the recent court decision in *Mexichem Fluor, Inc. v. EPA*; to enforce the regulation; and for the health, safety, and welfare of the people of California;

The proposed regulation is estimated to reduce HFC emissions by approximately 3.4 MMTCO_{2e} per year by 2030;

The proposed regulation enhances California's leadership on climate issues and demonstrates that subnational jurisdictions can take important action to reduce HFC emissions;

The proposed regulation meets the statutory requirements that CARB monitor and regulate sources of GHG emissions that cause global warming in order to reduce such emissions to 1990 emission levels by 2020, reduce GHG emission levels to 40 percent below 1990 by 2030, maintain the GHG emissions reductions, and continue to seek reduction as identified in sections 38510, 38560, 38562, and 38566 of the Health and Safety Code;

The proposed regulation meets the statutory requirements that the Board monitor compliance with and enforce any rule, regulation, order, emission limitation, emissions reduction measure, or market based compliance mechanism adopted under Division 25.5 of the Health and Safety Code identified in section 38580 of the Health and Safety Code;

The proposed regulation meets the statutory requirements for California to identify measures to reduce SLCPs and begin implementing the SLCP Strategy as identified in sections 39730 and 39730.5 of the Health and Safety Code;

The proposed regulation meets the statutory requirements for California to begin implementing measures identified in the SLCP Strategy and reduce HFC emissions by 40 percent below 2013 levels by 2030, as identified in section 39730.5 of the Health and Safety Code;

The proposed regulation meets the statutory requirement that the Board adopt rules and regulations to require the owner or operator of any pollution emission source to take reasonable actions for the determination of the amount of such emission from such source as identified in section 41511 of the Health and Safety Code;

The proposed regulation was developed in an open public process, in consultation with affected parties, through a public workshop, numerous individual meetings, and other outreach efforts, and these efforts are expected to continue;

The economic and fiscal impacts of the proposed regulation has been analyzed as required by California Government Code sections 11346.2, 11346.3, 33136.5, and 11346.9 and the conclusions and supporting documentation for this analysis are described in the Staff Report;

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

The proposed regulation is consistent with CARB's environmental justice policies and do not disproportionately impact people of any race, culture, or income; and

The proposed regulation is exempt from CEQA under California Code of Regulations, title 14, section 15308 because substantial evidence in the record shows that it will enhance the environment by better protecting the public from health impacts associated with climate change, the regulatory process involves procedures for protection of the environment, and the proposal will not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption, sections 95371, 95372, 95373, 95374, 95374, 95375, 95376, and 95377, and amendment to subarticles 4 and 5 of title 17, California Code of Regulations, as set forth in Attachment A to the Staff Report.

BE IT FURTHER RESOLVED that if there is a possibility that any modifications to the regulation made available for one or more 15 day public comment periods may affect the conclusion of the environmental analysis, the Executive Officer shall prepare and circulate

any additional environmental analysis to the extent required by CARB's regulations at California Code of Regulations, title 17, sections 60000-60007, and prepare written responses to any comments received raising significant environmental issues as necessary, to present to the Board for approval along with the final regulation.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to determine if additional conforming modifications to the regulation are appropriate. If no additional modifications are appropriate, the Executive Officer shall take final action to adopt the regulation, as set forth in Attachment A. If the Executive Officer determines that additional conforming modifications are appropriate, the modified regulatory language shall be made available for public comment, with any additional supporting documents and information. The Executive Officer shall consider written comments submitted during the public review period and make any further modifications that are appropriate available for public comment for at least 15 days. The Executive Officer may present the regulation to the Board for further consideration if warranted, and if not, the Executive Officer shall take final action to adopt the regulation after addressing all appropriate conforming modifications.

I hereby certify that the above is a true and correct copy of Resolution 18-14 as adopted by the Air Resources Board.

Rana McReynolds, Clerk of the Board

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March 23, 2018

Identification of Attachments to the Board Resolution

Attachment A: Proposed Prohibitions on Use of Certain Hydrofluorocarbons in Stationary Refrigeration and Foam End-Uses, title 17, California Code of Regulations, sections 95371, 95372, 95373, 95374, 95375, 95376, and 95377, as set forth in Appendix A to the Initial Statement of Reasons, released January 30, 2018.