

State of California
AIR RESOURCES BOARD

Second Notice of Public Availability of Modified Text

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

Public Hearing Date: January 22, 2009
First Public Availability Dates: April 9, 2009 - April 24, 2009
Second Public Availability Date: November 16, 2009
Deadline for Public Comment: December 1, 2009

This notice announces a second supplemental period during which the public may comment on additional proposed modifications to the regulation for small containers of automotive refrigerant. No action by the public is necessary unless persons wish to comment on the additional modifications.

At its January 22, 2009, public hearing, the Air Resources Board (ARB or Board) considered the adoption of the proposed Regulation for Small Containers of Automotive Refrigerant (California Code of Regulations title 17, sections 95360 through 95370) and documents incorporated by reference therein, "Certification Procedures for Small Containers of Automotive Refrigerant", "Test Procedure for Leaks from Small Containers of Automotive Refrigerant" (TP-503), and "Balance Protocol for Gravimetric Determination of Sample Weight using a Precision Analytical Balance" (BP-A1). This regulation and incorporated certification and test procedures reduces greenhouse gas (GHG) emissions associated with do-it-yourself (DIY) recharging of motor vehicle air conditioning (MVAC) systems, primarily by establishing certification requirements that mandate containers to be equipped with self-sealing valves, and by establishing a small container deposit and return and refrigerant recovery program. Other components of the regulation include improved container labels and consumer educational materials to promote consumer education of proper MVAC charging practices and of the environmental consequences of releasing refrigerant to the environment.

At the conclusion of the hearing, the Board adopted Resolution 09-1, in which it approved the originally proposed regulation and incorporated certification and test procedures. In accordance with section 11346.8 of the Government Code, the Resolution directed the Executive Officer to adopt the proposed regulation and the documents incorporated by reference therein, along with such other conforming modifications and technical amendments as may be appropriate, and to make such modifications available for a supplemental comment period of at least 15 days. The Executive Officer was then directed either to adopt the amendments with such additional modifications as may be appropriate in light of the comments received, or to present the regulations to the Board for further consideration if warranted in light of the

comments. Resolution 09-1 is available at the following ARB website:
<http://www.arb.ca.gov/regact/2009/hfc09/res091.pdf>

The text of all the modifications to the originally proposed regulation and incorporated documents were made available for a supplemental 15-day comment period by issuance of a “Notice of Public Availability of Modified Text.” This Notice was made available to the public on April 9, 2009, and published on ARB’s website for this rulemaking at <http://www.arb.ca.gov/regact/2009/hfc09/hfc09.htm> on April 9, 2009. One written comment was received during the 15-day comment period.

After considering the comment received during the 15-day comment period, the Executive Officer issued Executive Order R-09-005, adopting the modified regulation and the incorporated documents.

On September 1, 2009, the Office of Administrative Law (OAL) partially approved and partially disapproved the proposed regulation. The approved portions of the regulation took effect on October 1, 2009, and established regulations applicable to the sale, supply, and manufacture for sale in California of small containers of automotive refrigerant beginning January 1, 2010.

OAL disapproved the proposed portion of section 95366(a)(2) that read “, and can be increased in \$5 increments as described in section 95367(d)(1) or decreased by such amounts as determined by the Executive Officer in section 95367(d)(2)”, and also disapproved proposed section 95367, subdivisions (d) through (g). These provisions primarily specified the conditions under which ARB’s Executive Officer could increase or decrease the amount of the deposit applicable to consumers of small containers of automotive refrigerant.

OAL disapproved those portions of the proposed regulation because it determined that they did not comply with the consistency standard of Government Code section 11349.1, subdivision (a) in that they “would have prescribed a procedure for the amendment of the regulation specifying the amount of the deposit on small containers of automotive refrigerant that does not comply with the requirements of the Administrative Procedure Act.”

This notice contains further modifications and clarifications to address the concerns noted by OAL in its Decision of Disapproval of Part of a Regulatory Action, and to provide manufacturers further flexibility and clarification. The proposed modifications to the regulatory text are contained in Attachment 1 to this notice and are described below:.

I. Modifications to Regulatory Text of California Code of Regulations, Title 17, Sections 95360 through 95370, Being Made Available for Comment

1. Article 3, “Fees for Sources of Greenhouse Gas Emissions” and subarticles 1, 2, and 3 within Article 4, “Regulations to Achieve Greenhouse Gas Emission Reductions,” have been reserved for future rulemakings.

2. Sections 95362(b), 95365(c), 95366(e), and 95368(d) have been modified by substituting July 20, 2009 for “[insert date of adoption]” in the “Certification Procedures for Small Containers of Automotive Refrigerant” and of Test Procedure (TP-503), “Test Procedure for Leaks from Small Containers of Automotive Refrigerant”.
3. Section 95361(a)(15) has been modified by substituting “AHRI” and “Air-Conditioning, Heating, and Refrigeration Institute” for “ARI” and “The Air-Conditioning & Refrigeration Institute” to reflect that trade association’s current name.
4. Section 95361(a)(21) has been modified by substituting “as identified in section 95362(b)” for “as specified by the Executive Officer,” in order to more clearly reference the performance criteria applicable to self-sealing valves.
5. Section 95362(b)(1) has been modified by deleting the unneeded term “test.”
6. Section 95366(a)(2) has been amended by clarifying that the deposit on small containers of automotive refrigerant (initially set at \$10), can only be reduced in \$5 decrements, but the deposit shall in no event be reduced below \$5.
7. Section 95367(d)(1) has been modified to clarify the criteria governing increases to the small container deposit amount of section 95366(a) that were disapproved by OAL. First, “the applicable” has been substituted for “its” in the second line, and “specified in section 95367(c)” has been added to the second and third lines. Second, this section has been modified to now specify that if the two calendar year average return rate does not meet or exceed the applicable return rate of section 95367(c), the Executive Officer “shall” increase the deposit amount of 95366(a) by \$5. Third, this section modifies and clarifies the previously proposed language by restricting and narrowing the types of information that manufacturers and retailers can submit to the Executive Officer and that the Executive Officer can consider before deciding either to increase or to not increase the container deposit amount under this subsection.

The previously proposed (and OAL disapproved) language allowed manufacturers and retailers to submit “any information” to the Executive Officer, and would have also allowed the Executive Officer to consider “any information” in deciding whether or not to increase the container deposit amount of section 95366(a). The currently proposed language now allows manufacturers and retailers to submit only information that is directly related to the calculation of the annual return rate or to the accuracy of the underlying sales or returned can data described in sections 95367(a)(1) through (a)(4) (e.g., a manufacturer might submit information supporting an assertion that its returned can data did not accurately reflect its “true” return rate of used containers because a significant quantity of used containers were accidentally destroyed en route to a recycling facility).

8. Section 95367(d)(2) has been modified to propose new criteria governing decreases to the small container deposit amount of section 95366(a) that were disapproved by OAL. The proposed language now specifies that a manufacturer or retailer may request that the Executive Officer or his or designee decrease the container deposit amount specified in section 95366(a) by \$5, provided the deposit amount is not reduced below \$5, if the annual two calendar year average return rate exceeds its target return rate by at least 2.5 percent for two consecutive reporting periods within a four year period of time. The Executive Officer shall reduce the deposit amount \$5 by May 31 of that calendar year, unless he or she has information that demonstrates either that the applicable annual return rates, as described in section 95367(b) were not calculated correctly, or that the underlying sales or returned can data, as described in sections 95367(a)(1) through (a)(4), did not accurately reflect the true return rate of used containers.

The previously proposed (and OAL disapproved) language allowed manufacturers and retailers to request that the deposit amount be reduced if the two calendar year average return rate exceeded the target return rate. The Executive Officer would then base his or her decision on whether to reduce the deposit, and if so, by what amount, on submitted information, "other data or studies, and/or good engineering judgment regarding whether the proposed reduction would reasonably cause future return rates to not consistently or adequately exceed the target return rates specified by section 95367(c)."

The newly proposed language limits the Executive Officer's discretion whether to reduce the container deposit, and if so, by what decrement. A fixed decrement of \$5 is proposed to minimize manufacturer and retailer burdens related to container labeling and recordkeeping requirements, and to reduce consumer confusion related to fluctuating deposit amounts.

A \$5 minimum deposit is proposed. As stated in Section VII of the Staff Report: Initial Statement of Reasons for Rulemaking, the Automotive Refrigeration Products Institute (ARPI) conducted a brief pilot study in two Southern California cities during the spring of 2008 to determine consumer compliance with a recycling program that included a \$5 container deposit. The container return rate observed from the pilot program was 75 percent, but the pilot program was run in small geographic area with a minimal amount of advertising, and the participants were not previously notified of the existence of the program. In contrast, the small container regulation requires extensive labeling and other consumer education elements on a statewide basis that will ensure consumers are aware of the existence of, and the need for container recycling. Furthermore, the regulation will have been implemented for at least two years before the deposit amount can be decreased. Staff believes that these factors, that were not present in the pilot program, could, in conjunction with a minimum container deposit amount of \$5, result in attainment of the target return rates specified in section 95367(c).

Finally, the criteria of exceedance of the target return rate of 2.5 percent for two consecutive reporting periods within a four year period of time provides better quantitative and objective metric for governing deposit decreases than the previously proposed and disapproved criteria.

9. Section 95367(e) has been modified to clarify proposed language that was disapproved by OAL. This section now states that if the Executive Officer increases or decreases the container deposit amount of 95366(a), all containers manufactured after January 1 of the year following the Executive Officer's decision must have new labels and SKUs that reflect the new deposit rate.
10. Section 95367(f) has been modified to incorporate minor, nonsubstantive changes to clarify proposed language that was disapproved by OAL. First, "before" has been substituted for "prior to" in the third line. Second, "that" has been substituted for "the decision as described in section 95367(d)(1)." This section still states that if the Executive Officer increases the deposit amount of section 95366(a) pursuant to new section 95367(d)(1), any small container that was manufactured or packaged prior to January 1 of the year following that decision to change the deposit rate may be sold, supplied, or offered for sale in California.
11. Section 95367(g) has been modified to clarify and amend previously proposed language that was disapproved by OAL. This section now provides that if the Executive Officer decreases the deposit amount of section 95366(a) pursuant to new section 95367(d)(2), any small container that was manufactured or packaged before January 1 of the year following that decision may be sold, supplied, or offered for sale in California until the December 31 of the year following that decision, and that any such small container that is not sold by December 31 of the year following the decision must be recalled by the manufacturer no later than 90 calendar days after December 31 of year following that decision. For example, if the Executive Officer decreased the deposit rate on May 31, 2014, small containers manufactured or packaged before January 1, 2015, could be sold until December 31, 2015, and manufacturers would be required to recall any unsold containers by March 30, 2016.

This provision provides manufacturers longer sell through and recall periods for existing containers than those specified in the previously proposed language. However, because existing containers would already be certified to demonstrate compliance with all applicable requirements, the extended periods would not adversely affect emissions reductions, and would provide manufacturers greater flexibility in scheduling and implanting recalls of existing containers.

The proposed modifications to the Certification Procedures for Small Containers of Automotive Refrigerant are contained in Attachment 2 to this notice.

II. Modifications to Text of Certification Procedures for Small Containers of Automotive Refrigerant Being Made Available for Comment

1. "July 20, 2009" has been substituted for the "Adoption Date" on the cover page of these procedures and for the "Date of Adoption" of TP-503, Test Procedure for Leaks from Small Containers of Automotive Refrigerant in sections 2.1(C) and 2.1(E) of these Certification Procedures.
2. The term "Diurnal" has been removed from the title of TP-503 in sections 2.1(C) and 2.1(E) of these procedures to maintain full consistency with TP-503.
3. The page-numbering references to "B-" in the Table of Contents and in the document footer of these Certification Procedures have been removed.
4. Section 2.3(A)(3)(f) of the Certification Procedures has been modified to allow a manufacturer to publish required safety precautions, vehicle operating parameters, and vehicle air conditioning recharging procedures on a designated Internet website in lieu of the previously specified Internet site "www.staycoolcalifornia.com". Specifically, Section 2.3(A)(3)(f) substitutes the phrase "*a website address*" [the website will contain information as described in Certification Procedures 2.4 (A)(6)] for "www.staycoolcalifornia.com".
5. Section 2.3(B)(3) of the Certification Procedures has been modified to reflect the fact that the container deposit amount specified in section 95366(a) may be increased or decreased, as described in sections 95367(d)(1) or (d)(2). Specifically, "XX" has been substituted for "\$10" in the second line of section 2.3(B)(3). Although the deposit amount is initially specified at \$10 by section 95366(a)(2), this amount is, as discussed, subject to adjustment and should therefore not be permanently included in this section.

The proposed modifications to TP-503, "Test Procedure for Leaks from Small Containers of Automotive Refrigerant" are contained in Attachment 3 to this notice.

III. Modifications to Text of TP-503, Test Procedure for Leaks from Small Containers of Automotive Refrigerant Being Made Available for Comment

1. "July 20, 2009" has been substituted for the "Adoption Date" on the cover page of these test procedures and for "[BARCU will insert]" of section 2.1(B) of the Certification Procedures for Small Containers of Automotive Refrigerant in sections 1 and 2 of these test procedures.
2. "July 20, 2009" has been substituted for the "[BARCU will insert]" of Balance Protocol (BP-A1) "Balance Protocol for Gravimetric Determination of Sample Weights using a Precision Balance" in sections 6, 8, 8.4, and 8.10 of these test procedures.

The proposed modifications to BP-A1, "Balance Protocol for Gravimetric Determination of Sample Weights using a Precision Balance" are contained in Attachment 4 to this notice.

IV. Modifications to Text of BP-A1, Balance Protocol for Gravimetric Determination of Sample Weights using a Precision Balance Being Made Available for Comment

1. "July 20, 2009" has been substituted for the "Adoption Date" on the cover page of this balance protocol.
2. The page-numbering references to "D-" in the Table of Contents and in the document footer of this balance protocol have been removed.

Written comments will only be accepted on the modifications identified in this notice and may be submitted by postal mail or electronic mail submittal as follows:

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

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

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

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette, or computer disk. For assistance, please contact the Clerk of the Board at (916) 322-5594 as soon as possible.

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce

energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.