

## FINAL REGULATION ORDER

### Small Containers of Automotive Refrigerant

#### Subchapter 10. Climate Change

#### Article 4. Regulations to Achieve Greenhouse Gas Emission Reductions

#### Subarticle 5. Small Containers of Automotive Refrigerant

*Adopt new Article 4, Subarticle 5, sections 95360 to 95370, title 17, California Code of Regulations, to read as follows:*

#### **§ 95360. Applicability**

Except as otherwise provided in sections 95363 or 95364, this subarticle applies to any person who uses, sells, supplies, offers for sale, advertises, manufactures for sale, recycles, reclaims, recovers, imports, exports, or introduces into commerce in the State of California any automotive refrigerant in a small container that is used or intended for use to charge motor vehicle air conditioning systems.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

#### **§ 95361. Definitions**

- (a) The definitions in section 1900(b), Title 13 of the California Code of Regulations apply with the following additions:
- (1) “Automotive Refrigerant” means any substance used, sold for use, or designed or intended for use as a heat transfer fluid and provides a cooling effect in a Motor Vehicle Air Conditioner (MVAC) that is not either a Class I or a Class II refrigerant as defined in 42 U.S.C. sections 7671(a) or (b), or that is listed in Title 40, Code of Federal Regulations part 82, subpart A, appendix A, as it existed as of July 1, 2006.
  - (2) “Automotive Refrigerant in a Small Container” means automotive refrigerant packaged in a container holding more than 2 ounces and less than 2 pounds of automotive refrigerant by weight.
  - (3) “Breached Container” means any small container that has been structurally compromised so that the container’s contents have been released to the environment through an opening other than the self-sealing valve.

- (4) “Can Heel” means the quantity of automotive refrigerant remaining in a small container of automotive refrigerant after that small container of automotive refrigerant has been used to charge an MVAC system or systems with refrigerant.
- (5) “Consumer” means the first person who in good faith purchases automotive refrigerant in a small container for purposes other than resale, including, but not limited to, MVAC maintenance and repair activities or other applications involving this product. A person who purchases automotive refrigerant in a small container for purposes of servicing or repairing another person’s MVAC for consideration (e.g., a MVAC technician) is considered a ‘consumer’ for purposes of this subarticle. Manufacturers, distributors, and retailers are not consumers.
- (6) “Dispose” means to discard a small container of automotive refrigerant in any manner, except as permitted in section 95365 of this subarticle.
- (7) “Distributor” means any person to whom an automotive refrigerant small container is sold or supplied for the purposes of resale or distribution in commerce, including imports to and exports from the United States. Manufacturers, retailers, and consumers are not distributors.
- (8) “Executive Officer” means the Executive Officer of the California Air Resources Board (ARB).
- (9) “Global Warming Potential” (GWP) means the radiative forcing impact of one mass-based unit of a given greenhouse gas relative to an equivalent unit of carbon dioxide over a given period of time.
- (10) “Global Warming Potential Value” or “GWP Value” means, for the purposes of this subarticle, the 100-yr GWP value first published by the IPCC in its Second Assessment Report (SAR) (IPCC, 1995); or if a 100-yr GWP value was not specified in the IPCC SAR, it means the GWP value published by the IPCC in its Fourth Assessment Report (AR4) (IPCC, 2007); or if a 100-yr GWP value was not specified in the IPCC AR4, then the GWP value will be determined by the Executive Officer based on data, studies and/or good engineering or scientific judgment. Both the 1995 IPCC SAR values and the 2007 IPCC AR4 values are published in table 2.14 of the 2007 IPCC AR4. The SAR GWP values are found in column “SAR (100-yr)” of Table 2.14.; the AR4 GWP values are found in column “100 yr” of Table 2.14.”

- (11) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, embossed on, or appearing upon any small container for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.
- (12) "Manufacturer" means any person who imports, manufactures, assembles, packages, repackages, recovers, recycles, or reclaims automotive refrigerant in a small container, or who re-labels such a container of refrigerant.
- (13) "Motor Vehicle Air Conditioner" (MVAC) is a system installed in a motor vehicle that uses a refrigerant to cool the driver's or passenger's compartment.
- (14) "Person" has the same meaning as defined in Health and Safety Code section 39047.
- (15) "Reclaim" means to process refrigerant to a level equivalent to new product specifications in accordance with the ARI 700-2006 Standard ("Specifications for Fluorocarbon Refrigerants", Air-conditioning & Refrigeration Institute, Arlington, VA, 2006).
- (16) "Recover" means to remove automotive refrigerant, in any condition, from a MVAC system without necessarily testing or processing it in any way.
- (17) "Recycle" means to clean automotive refrigerant for reuse by oil separation and by single or multiple passes through moisture-absorption devices, such as replaceable core filter-driers that reduce moisture, acidity, and particulate matter.
- (18) "Recovery facility" means a facility that recovers automotive refrigerant that is subject to the provisions of this subarticle.
- (19) "Retailer" means any person who owns, leases, operates or controls, or supervises a retail outlet in California. Manufacturers, distributors, and consumers are not retailers.
- (20) "Retail Outlet" means any establishment at which automotive refrigerant in a small container is sold, supplied, or offered for sale in California.
- (21) "Self-Sealing Valve" means a valve affixed to an automotive refrigerant small container that automatically seals to prevent or minimized inadvertent release of refrigerant when not actively engaged for the purpose of dispensing refrigerant, and meets or

exceeds established performance criteria as specified by the Executive Officer.

- (22) "SKU" (Stock Keeping Unit) means a unique code identifier for each distinct product or service that can be ordered from a supplier. The SKU system enables the merchant to systematically track their inventory, such as in warehouses and retail outlets.
- (23) "Small Container" or "Small Container of Automotive Refrigerant" has the same meaning as "Automotive Refrigerant in a Small Container" as specified in section 95361(a)(2).

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

#### **§ 95362. Certification Procedures for Small Containers of Automotive Refrigerant**

- (a) Except as provided in sections 95363 or 95364, on or after January 1, 2010, no person may sell, supply, offer for sale, or manufacture for sale in California automotive refrigerant in a small container unless that automotive refrigerant in a small container has been certified for use and sale by the Air Resources Board and is covered by an Executive Order issued pursuant to this subarticle.
- (b) The criteria for obtaining certification, including all test procedures for determining compliance with applicable test procedures, are set forth in "Certification Procedures for Small Containers of Automotive Refrigerant", adopted on **[Insert date of Adoption]** which is incorporated by reference herein.
- (c) Any modification to the design or specifications of a small container of automotive refrigerant that has been issued an Executive Order pursuant to these procedures must be disclosed to ARB before any modified small container of automotive refrigerant may be sold, supplied, offered for sale, or manufactured for sale in California. The Executive Officer will exercise good engineering judgment to determine if said change(s) constitute a significant difference to the design or specification of a previously certified small container of automotive refrigerant. If the Executive Officer determines that said change(s) constitute a significant difference to the design or specification of a previously certified small container of automotive refrigerant, the manufacturer must then request that the modified small container of automotive refrigerant be issued a new Executive Order pursuant to the provisions of this subarticle.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

### **§ 95363. Exemption for Low GWP Value Refrigerants**

This subarticle does not apply to automotive refrigerants with a GWP value equal to or less than 150, where GWP value is defined as described in section 95361(a)(10).

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

### **§ 95364. Sell-Through of Products**

- (a) Notwithstanding the provisions of section 95362(a), automotive refrigerant in a small container that was packaged or manufactured before January 1, 2010 may be sold, supplied, or offered for sale in California until December 31, 2010.
- (b) Notification necessary for products sold during the sell-through period. A person who sells or supplies automotive refrigerant in a small container that does not fully comply with the provisions of section 95362 must notify the purchaser in writing of the date on which the sell-through period will end. This notification must be supplied only if all of the following conditions are met:
  - (1) The product is being sold or supplied to a distributor or retailer; and
  - (2) The sell-through period for the product will expire 6 months or less from the date the product is sold or supplied.
- (c) Any small container of automotive refrigerant that is not sold by December 31, 2010 must be recalled by the manufacturer. A manufacturer must report the total number of small containers of automotive refrigerant that are recalled in the reports required by section 95367.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

**§ 95365. Container Disposal or Destruction**

- (a) On or after January 1, 2010, no person shall dispose of or destroy any small container of automotive refrigerant that is subject to the requirements of this subarticle unless the disposal or destruction is performed in accordance with the procedures specified in this section.
- (b) A manufacturer or its designated recovery facility must evacuate small containers of automotive refrigerant to less than atmospheric pressure, unless the containers are breached or damaged to an extent that precludes recovery of the refrigerant. All other persons must return small containers of refrigerant that contain any quantity of refrigerant to the retailer, the manufacturer, or the manufacturer's designated recovery facility.
- (c) Refrigerant recovery facilities must be registered with the ARB as described in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted on **[Insert date of Adoption]**, which is incorporated by reference herein.
- (d) Small containers of automotive refrigerant that are breached do not count as recycled small containers of automotive refrigerant for the purpose of calculating the recycle rate.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

**§ 95366. Container Deposit and Return Program Requirement**

- (a) Except for small containers of automotive refrigerant exempted under section 95363 or section 95364 of this subarticle, on or after January 1, 2010, and subject to the provisions of section 95367, a retailer of automotive refrigerant in a small container that is subject to the requirements of this subarticle must:
  - (1) Collect a deposit from the consumer or charge the consumer's account for each small container of automotive refrigerant at the time of sale.
  - (2) The amount of deposit on each small container is initially set at \$10, 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).

- (3) Return the deposit to the consumer, or credit the consumer's account when the consumer returns a used small container of automotive refrigerant to the retailer, provided that the consumer returns the used container of refrigerant to the retailer where purchased within 90 days of purchase, submits proof of purchase (e.g., cash register receipt), and provided that the container has not been breached. A retailer may return the deposit at his discretion if more than 90 days have elapsed, the consumer does not have a receipt, if the consumer returns the container to a location other than the place of purchase, or if the container has been breached.
  - (4) Accumulate and store any used small container of automotive refrigerant for transfer to the manufacturer or its designee, and may segregate breached returned small containers from non-breached returned small containers. The manufacturer will, along with each participating retailer/distributor, identify or provide collection bins, totes or boxes that work in a complementary fashion within each retailer/distributors' current established distribution best practice for like merchandise, facilitating their ability to segregate breached small containers. Likewise, it will be the manufacturer's responsibility to identify each retailer/ distributor's most complimentary manner of transport and return of returned small containers of automotive refrigerant to the recovery/recycle facilities.
- (b) Except for small containers of automotive refrigerant exempted under section 95363 or section 95364 of this subarticle, on or after January 1, 2010, and subject to the provisions of section 95367, a manufacturer or its designated return agency must:
- (1) Collect a deposit on each small container of automotive refrigerant at the time of sale to a distributor or retailer.
  - (2) Accept from a retailer or distributor used small containers of refrigerant certified under section 95362.
  - (3) Maintain a log of returned used containers by SKU, retailer, and return date.
  - (4) Refund to the retailer or distributor the full amount of the deposits collected under section 95366(b)(1) for all used small containers of automotive refrigerant certified under section 95362 that were returned. A manufacturer or designated return agency must count and record the number of small containers of automotive refrigerant that have been breached.

- (5) All deposits not returned by manufacturers to retailers in exchange for used small containers of automotive refrigerant will accrue to an account managed by the manufacturer to be used solely as described in section 95366(b)(6) for the purpose of enhancing the consumer education program. The manufacturer must report and account for how these account funds are spent in accordance with section 95367(a)(5) of this subarticle.
- (6) Separately account for any funds attributable to unclaimed deposits, expend those funds only on enhanced educational programs approved by the Executive Officer, that are designed to inform consumers of measures to reduce GHG emissions associated with do-it-yourself recharging of MVAC systems, and provide to ARB an accounting of the collection and expenditures of these funds as described in section 95367(a)(5). Examples of enhanced education programs include, but are not limited to: improved Internet website support, development of additional educational materials, training and outreach to the consumer via retailers, and development and usage of videos and other means of demonstrations at retail sites. A manufacturer must provide a description of any proposed enhanced educational programs in its application for certification of small containers of automotive refrigerant, and must obtain the Executive Officer's approval before it can expend funds attributable to unclaimed deposits on that enhanced educational program.
- (c) A manufacturer may designate an additional facility to receive and store returned used small containers of automotive refrigerant and to pay consumer refunds specified in section 95366(a) and (b) at the time a container is returned. Such a facility may be either a retail store or an entity that is not affiliated with a retail store.
- (d) A manufacturer or its designee must coordinate the collection of used small containers of automotive refrigerant from retailers and any designated return agencies. To reduce the burden on the retailer, the manufacturer shall, along with each participating retailer/distributor, identify or provide collection bins, totes or boxes that work in a complementary fashion within each retailer/distributors' current established distribution best practice for like merchandise. Likewise, it shall be the manufacturer's responsibility to identify each retailer/distributor's most complementary manner of transporting returned small containers of automotive refrigerant to the recovery/recycle facilities.
- (e) A manufacturer or its designee must recover any refrigerant remaining in the returned small containers at a facility registered with the ARB as described in "Certification Procedures for Small Containers of Automotive

Refrigerant” adopted on **[Insert date of Adoption]**, which is incorporated by reference herein. The facility must employ good engineering practices to avoid loss of refrigerant to the atmosphere. The refrigerant must be recovered, recycled, reclaimed, or removed to a licensed waste disposal facility.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

## **§ 95367. Recycling Reporting Requirements**

- (a) Reports to the Executive Officer-are due March 1 every year starting March 1, 2011. Each annual report documents monthly data for small containers of automotive refrigerant sold and returned during the prior calendar year, January 1 though December 31. Reports must be submitted as follows:
  - (1) Upon request from ARB, each retailer must report sales data of the number of small containers of automotive refrigerant sold and the number of used small containers of automotive refrigerant returned by consumers. The sales data and returned can data must be reported for each SKU, for each manufacturer, distributor, for each month, and as totals for each reporting period. The data must be reported separately for the following categories: returned unused, returned for recycle, returned breached, to the extent that the retailer has segregated breached cans pursuant to section 95366(a)(4).
  - (2) Each distributor must report sales data of small containers of automotive refrigerant. The sales data must be reported for each SKU for each retailer, manufacturer, and for each month.
  - (3) Each manufacturer must report sales data of the number of small containers of automotive refrigerant sold to each retailer or distributor within the State and the number of small containers of automotive refrigerant returned for recycling by each retailer or distributor within the State. The sales data must be reported for each SKU, for each distributor, retailer, or other outlet, for each month and as totals for each reporting period.
  - (4) Each manufacturer or recycler of small containers of automotive refrigerant must report the number of small containers received for recycling. The returned container data must be reported for each SKU, for each retailer or other source of return, for each month, and as totals for each reporting period. The data must be segregated according to reason for the can return: returned

unused, returned for recycle, returned breached. The refrigerant amount recovered must be reported for each manufacturer, and for each month.

- (5) Each manufacturer of small containers of automotive refrigerant must report the amounts of unclaimed deposits retained, and an accounting and description of how those funds were spent to enhance consumer education. The report must highlight each component of an educational program and funds spent for that component.
  - (6) Each recycler of refrigerant from small containers of automotive refrigerant must report the amount of refrigerant recovered, along with the amount of that refrigerant recycled, reclaimed, or disposed of. The refrigerant amounts must be reported for each manufacturer, and for each month.
- (b) Starting 2011, the ARB will calculate and publish the annual return rate for containers of refrigerant subject to the requirements of this subarticle based on reports submitted to ARB by the manufacturers, distributors, and the retailers. The return rate of containers will be published by May 31 each year and calculated as the number of containers of refrigerant returned, divided by the number of containers sold to consumers during the period under consideration. The return rate will exclude returned small containers of automotive refrigerant that are breached (i.e., the number of returned small containers that are breached will be excluded from the numerator, but will be included in the denominator).
- (c) Between January 1, 2010 and December 31, 2011, the target return rate for small containers is 90%. For periods beginning January 1, 2012 and thereafter, the target return rate for containers is 95%.
- (d) Every two years beginning 2012, ARB will evaluate the return rates, as described in section 95367(b), based on data from the prior two calendar years compared to the target rates, as described in section 95367(c).
- (1) If the two calendar year average return rate does not meet or exceed its target return rate, the Executive Officer or his or her designee may revise the deposit amount of section 95366(a) by an additional \$5. Before increasing the deposit amount under this provision, the Executive Officer or his or her designee may consider any information submitted by manufacturers or retailers received by March 1 of that calendar year. The decision will be made by May 31 of that calendar year.

- (2) If the two calendar year average return rate exceeds its target return rate, a manufacturer or retailer may request that the Executive Officer or his or designee reduce the deposit amount of section 95366(a). A manufacturer or retailer must supply information supporting a request to reduce the deposit amount by March 31 of a calendar year. The Executive Officer or his or her designee will base the decision whether to reduce the deposit amount, and if so by what amount, on information submitted by the manufacturer or retailer, other data or studies, and/or good engineering or scientific 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). A decision to reduce the deposit amount will be made by May 31 of the same calendar year in which the request was submitted.
- (e) All small containers of automotive refrigerant manufactured after January 1 of the year following the decision as described in section 95367(d)(1) or (d)(2) to change the deposit rate must have new labels and SKUs, which reflect the new deposit rate.
- (f) If the Executive Officer increases the deposit amount specified in section 95366(a) pursuant to section 95367(d)(1), any small container of automotive refrigerant that was manufactured or packaged prior to January 1 of the year following the decision as described in section 95367(d)(1) to change the deposit rate may be sold, supplied, or offered for sale in California.
- (g) If the Executive Officer decreases the deposit amount specified in section 95366(a) pursuant to section 95367(d)(2), any small container of automotive refrigerant that was manufactured or packaged prior to January 1 of the year following the decision as described in section 95367(d)(2) to change the deposit rate may be sold, supplied, or offered for sale in California until the February 1 one calendar year from the date of the Executive Officer's decision to decrease the deposit amount. Any small container manufactured or packaged prior to January 1 of the year following the decision as described in section 95367(d)(2) to change the deposit rate that is not sold by the February 1 one calendar year from the date of the Executive Officer's decision must be recalled by the manufacturer no later than April 1 one calendar year from the date of the Executive Officer's decision, and the manufacturer must report the total number of small containers recalled in the reports required by section 95367.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

**§ 95368. Enforcement**

- (a) Penalties. Penalties may be assessed for any violation of this subarticle pursuant to Health and Safety Code section 38580. Each day during any portion of which a violation occurs is a separate offense.
- (b) Injunctions. Any violation of this subarticle may be enjoined pursuant to Health and Safety Code section 41513.
- (c) Revocation. The Executive Officer may revoke any Executive Order issued pursuant to this subarticle for a violation of this subarticle.
- (d) Testing to determine that small containers of automotive refrigerant are in compliance with the leakage rate requirement specified in "Certification Procedures for Small Containers of Automotive Refrigerant" adopted on **[Insert date of Adoption]**, which is incorporated by reference herein, shall be performed using Test Procedure (TP-503), Test Procedure for Leaks from Small Containers of Automotive Refrigerant, adopted **[Insert date of Adoption]**, which is incorporated herein by reference.
- (e) Before seeking remedial action against any manufacturer, distributor, or retailer, the Executive Officer will consider any information provided by the manufacturer, distributor, or retailer.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

**§ 95369. Recordkeeping Requirements.**

- (a) Each manufacturer, distributor, and retailer of small containers of automotive refrigerant must retain invoices for a period not less than 5 years that show the manufacturer, distributor, or retailer name, business name, physical address, contact name, telephone number, fax number, e-mail address, web site address, sale date, and the quantity of small containers of automotive refrigerant purchased or sold.
- (b) Each recovery facility must maintain records for a period not less than 5 years that show the number of small containers received, and from whom they were received.
- (c) Each recovery facility must maintain records for a period not less than 5 years that show the quantity of automotive refrigerant recovered, along with the quantity of that recovered refrigerant that was recycled, reclaimed, or disposed of.

- (d) Each manufacturer must maintain records for a period not less than 5 years that show expenditures for educational programs that it funded from unclaimed deposits.
- (e) Records include copies of all invoices, books, correspondence, electronic data, or other pertinent documents in the possession or under the control of a manufacturer, distributor or retailer that is necessary to prove compliance with the requirements of this subarticle.
- (f) The records specified in this section may be stored in paper, electronic, or other usable formats.
- (g) The records specified in this section must be provided to ARB upon request by the Executive Officer or his or her designee.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*

#### **§ 95370. Severability**

Each part of this subarticle is severable, and in the event that any provision of this subarticle is held to be invalid, the remainder of this subarticle shall continue in full force and effect.

*Note: Authority cited: Sections 38501, 38510, 38560, 38560.5, 38580, 39600, and 39601, Health and Safety Code. Reference: Sections 38501, 38505, 38510, 38550, 38551, 38560, 38560.5, 39003, 39500, 39600, and 39601, Health and Safety Code.*