

Title 17. California Air Resources Board

Notice of Public Hearing to Consider the Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant

The California Air Resources Board (CARB or Board) will conduct a public hearing at the date and time noted below to consider approving for adoption the proposed amendments to the Regulation for Small Containers of Automotive Refrigerant.

Date: October 26, 2023

Time: 9:00 A.M.

In-Person Location:

California Air Resources Board
Byron Sher Auditorium
1001 I Street, Sacramento, California 95814

Remote Option:

Zoom

This public meeting may continue at 9:00 a.m., on October 27, 2023. Please consult the public agenda, which will be posted ten days before the October 26, 2023, Board Meeting, for important details, including the day on which this item will be considered and how the public can participate via Zoom if they choose to be remote.

Written Comment Period and Submittal of Comments

In accordance with the Administrative Procedure Act, interested members of the public may present comments orally or in writing during the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on July 7, 2023. Written comments not submitted during the hearing must be submitted on or after July 7, 2023, and received **no later than August 21, 2023**. Comments submitted outside that comment period are considered untimely. CARB may, but is not required to, respond to untimely comments, including those raising significant environmental issues. The Board also encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action. Comments submitted in advance of the hearing must be addressed to one of the following:

Postal mail: Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

[Electronic submittal:](https://ww2.arb.ca.gov/applications/public-comments) <https://ww2.arb.ca.gov/applications/public-comments>

Please note that under the California Public Records Act (Gov. Code, § 7920.000 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, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

Authority and Reference

This regulatory action is proposed under the authority granted in California Health and Safety Code, sections 38501, 38505, 38510, 38560, 38560.5, 38562.2, 38566, 38580, 39600 and 39601. This action is proposed to implement, interpret, and make specific sections 38501, 38505, 38510, 38550, 38551, 38562.2, 38566, 38560, 38560.5, 39003, 39500, 39600, and 39601.

Informative Digest of Proposed Action and Policy Statement Overview (Gov. Code, § 11346.5, subd. (a)(3))

Sections Affected:

Proposed amendments to California Code of Regulations, title 17, sections 95360, 95361, 95362, 95364, 95364.1, 95365, 95366, 95367, 95368, 95369, and 95370. Proposed repeal of California Code of Regulations, title 17, section 95363. Proposed adoption of California Code of Regulations, title 17, sections 95364.2, 95366.1, 95366.2, 9567.1, and 95367.2.

Documents Incorporated by Reference (Cal. Code Regs., tit. 1, § 20, subd. (c)(3)):

- 40 Code of Federal Regulations (CFR) Part 82, Subpart F, Appendix A: Specifications for Refrigerants (July 1, 2022). Incorporated in section 95361
- 40 CFR, Part 82, §82.164, adopted on July 30, 1992, as last amended on November 18, 2016. Incorporated in section 95361.
- Air-Conditioning, Heating, & Refrigeration Institute (AHRI) Standard 700: 2019 Standard for Specifications for Refrigerants (2019). Incorporated in section 95361.
- Certification Procedures for Small Containers of Automotive Refrigerant, adopted on July 20, 2009, as last amended on [Insert Date of Amendment]. Incorporated in section 95362(d).

The above listed certification procedure is being amended by this regulation and thus the amendment date would be the date that the regulation is adopted by CARB.

Background and Effect of the Proposed Regulatory Action:

In January 2009, CARB approved for adoption the Regulation for Small Containers of Automotive Refrigerant (hereinafter "Small Container Regulation" or "Regulation") as an

early action measure for Assembly Bill (AB) 32.¹ The Regulation reduces greenhouse gas (GHG) emissions associated with do-it-yourself (DIY) recharging of motor vehicle air conditioning (MVAC) systems. The Regulation established requirements applicable to containers that hold between 2 ounces and 2 pounds of any automotive refrigerant with a global warming potential (GWP) greater than 150. The Regulation became effective on March 10, 2010.

The initial regulation is comprised of three main provisions. First, it requires that small containers of automotive refrigerant be equipped with a self-sealing valve and labels containing information to promote consumer education of proper MVAC charging practices and to prevent misuse of refrigerant. Second, it establishes a manufacturer administered deposit, return, and recycling program. Third, it mandates that any deposits unclaimed by consumers (unclaimed deposits) be used to increase the container return rate through an education and outreach program. Manufacturers of small containers of automotive refrigerant (manufacturers) must apply to CARB to certify their products for sale in California with information and data demonstrating compliance with the Regulation.

In 2016, CARB amended the Regulation with three additional provisions. First, clarifying language was added that requires retailers of small containers of automotive refrigerant (retailers) to transfer any unclaimed deposits to the container manufacturer or a designee of its choosing. Second, it allowed unclaimed deposits to be spent on projects, programs, or measures that reduce GHG emissions. Third, it fixed the consumer deposit at \$10.

Based on data obtained from annual reporting from manufacturers, retailers, and distributors of small containers of automotive refrigerant, staff determined that the quantity of refrigerant remaining in small containers upon return (the container heel) is approximately 4 percent, lower than the initial projection of 22 percent. As a result, the deposit and return program's contribution to emission reductions is lower than initially estimated.

In addition, container manufacturers launched an enhanced education program, starting midway through 2018 and lasting through 2020, with the aim of increasing the container return rate. The program included a paid media campaign with social media and digital outreach as well as established container return centers located in several major cities in California. However, return rates showed little change due to the education and outreach program. Due to the low GHG emission reductions from container heel recovery, unchanged return rates, and financial impacts to do-it-yourselfers (DIYers), staff is proposing to remove the deposit and return requirements. In addition, staff is proposing the requirement that reclaimed refrigerant be used in the manufacturing of small containers sold in California to offset the emission reductions currently achieved by the deposit and return program. Finally, revisions to the expenditure of unclaimed deposits will be aimed at decreasing MVAC leaks and increase recovery and reclaim in California.

Summary of the Proposed Amendments:

Staff is proposing amendments (collectively, Proposed Amendments) to the Regulation covering four main areas: (1) removal of the deposit and return program, (2) phase-in of requirements for reclaimed refrigerant in new small containers, (3) modification and

¹ AB 32 (Núñez, Stats. 2006, ch. 488). Health & Saf. Code sections 38500 et seq.

clarification of associated provisions related to sell-through and reporting requirements, and (4) refinement of procedures and parameters for spending unclaimed deposits. The Proposed Amendments also include minor changes to the Certification Procedures. The Proposed Amendments are expected to achieve slightly greater GHG emission reductions while reducing costs to DIYers, the primary consumers of small containers. Approximately 40 percent of small containers sales occur in Disadvantaged Communities (DACs). In addition, the Proposed Amendments focus the expenditure of any remaining unclaimed deposits towards projects that will reduce GHG emissions and increase the supply of reclaimed refrigerant that can be used in the small containers. Overall, the Proposed Amendments decrease costs to consumers, particularly those in DACs, achieve slightly greater emission reductions to the existing regulation, and incentivize the reclamation of refrigerant.

CARB may also consider other changes to the sections affected, as listed on page two of this notice, or other sections within the scope of this notice, during the course of this rulemaking process.

Objectives and Benefits of the Proposed Regulatory Action:

The objectives of the Proposed Amendments are threefold. First, they would decrease costs for all consumers, with DACs receiving the greatest cost savings benefits. Staff projects a benefit to California consumers of \$59.5 million cumulatively from 2025 to 2045 as deposits are no longer required to be collected from consumers. Second, they are expected to reduce emissions of Hydrofluorocarbon (HFC)-134a, helping to meet the 2030 or 2045 GHG reduction targets mandated by Senate Bill (SB) 1383², SB 32³, and AB 1279.⁴ Third, staff expects the Proposed Amendments to incentivize the reclamation of refrigerant. Staff anticipates that the reclaimed refrigerant used in future containers would lead to potential emission reductions of 1.6 and 3.3 MMTCO₂e cumulatively by 2030 and 2045, respectively.

Comparable Federal Regulations:

Currently, there are no federal regulations that require reclaimed refrigerant in small containers of automotive refrigerant. However, it is important to note that the Proposed Amendments would align with the Federal American Innovation and Manufacturing (AIM) Act⁵ in incentivizing HFC recovery and increasing the supply of reclaimed refrigerant. The amount of reclaimed HFC-134a necessary to meet the requirements of the Proposed Amendments is small relative to the amount used in all applications. The Proposed Amendments would align with the AIM Act production phase-down and can help serve as a market incentive for reclamation operations alongside the AIM Act's requirements.

² Senate Bill 1383 (Lara, Stat. 2016, Ch. 395); Health & Saf. Code §§ 39730.5 through 39730.8, and Public Resources Code §§ 42652 through 42654.

³ SB 32 (Pavley, Stat. 2016, Ch. 249); Health & Saf. Code § 38566.

⁴ AB 1279 (Muratsuchi, Stat. 2022 Ch. 337); Health & Saf. Code § 38562.2.

⁵ Pub. L. 116-120, div. S, §103, 134 Stat. 2255 (2021-2022); codified at 42 USC § 7675.

An Evaluation of Inconsistency or Incompatibility with Existing State Regulations (Gov. Code, § 11346.5, subd. (a)(3)(D)):

During the process of developing the proposed regulatory action, CARB conducted a search of any similar regulations on this topic and concluded these regulations are neither inconsistent nor incompatible with existing state regulations.

Disclosure Regarding the Proposed Regulation

Fiscal Impact/Local Mandate Determination Regarding the Proposed Action (Gov. Code, § 11346.5, subds. (a)(5)&(6)):

The determinations of the Board's Executive Officer concerning the costs or savings incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Under Government Code sections 11346.5, subdivision (a)(5) and 11346.5, subdivision (a)(6), the Executive Officer has determined that the proposed regulatory action would create costs or savings to any State agency, would not create costs or savings in federal funding to the State, would not create costs or mandate to any local agency or school district, whether or not reimbursable by the State under Government Code, title 2, division 4, part 7 (commencing with section 17500), or other nondiscretionary cost or savings to State or local agencies.

Cost to any Local Agency or School District Requiring Reimbursement under section 17500 et seq.:

None. These costs are not reimbursable pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of the Government Code. These costs are not reimbursable because this action neither compels local agencies to provide new governmental functions (i.e., it does not require such agencies to provide additional services to the public), nor imposes requirements that apply only on local agencies or school districts.⁶ Instead, this regulatory action establishes requirements that apply to all individuals and entities that purchase and use regulated small containers. This action also does not compel local agencies to increase the actual level or quality of services that they already provide the public.⁷ For the foregoing reasons, any costs incurred by local agencies to comply with this regulatory action are not reimbursable.⁸

Cost or Savings for State Agencies:

State government would expect an estimated total of approximately \$1.7 million from 2025 to 2045 due to potential increased sales taxes.

⁶ County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 56.

⁷ San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859, 877.

⁸ County of Los Angeles v. State of California, 43 Cal.3d. 46, 58.

Other Non-Discretionary Costs or Savings on Local Agencies:

Local governments would expect an estimated total of approximately \$2.2 million from 2025 to 2045 due to potential increased sales taxes.

Cost or Savings in Federal Funding to the State:

There are no costs or savings in federal funding to the state.

Housing Costs (Gov. Code, § 11346.5, subd. (a)(12)):

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Gov. Code, §§ 11346.3, subd. (a), 11346.5, subd. (a)(7), 11346.5, subd. (a)(8)):

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Results of The Economic Impact Analysis/Assessment (Gov. Code, § 11346.5, subd. (a)(10)):

Non-Major Regulation: Statement of the Results of the Economic Impact Assessment (EIA):

(A) The creation or elimination of jobs within the State of California.

Due to the projected increase in demand for reclaimed HFC-134a related to the Proposed Amendments, more jobs may be created in the reclamation industry to meet the demand. There are several in-state reclaimers, one of which is considered a small business, so position growth may increase but would be negligible in comparison to the California job market overall.

(B) The creation of new business or the elimination of existing businesses within the State of California.

The Proposed Amendments would increase the over-the-counter sale of reclaimed refrigerant and decrease the sale of virgin refrigerant. Virgin refrigerant manufacturers that sell to manufacturers of small containers of automotive refrigerant may see a decline in overall sales, but these businesses are not located in California.

- (C) The expansion of businesses currently doing business within the State of California.

Refrigerant recovery businesses located in California are expected to see an increase in reclaimed refrigerant demand and revenue. With the removal of the deposit and return program, retailers may see an increase in sales.

- (D) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The Proposed Amendments are expected to reduce GHG emissions by 1.6 and 3.3 MMTCO₂e cumulatively by 2030 and 2045, respectively. The Social Cost of Carbon benefits range between \$77 million and \$341 million cumulatively depending on the discount rates (i.e., 5 percent, 3 percent, or 2.5 percent) used from 2025 through 2045. These emission reductions are expected to result in benefits to the health and welfare of California residents and the State's environment through GHG emission reductions.

There would be a benefit of \$59.5 million as deposits are no longer required to be collected from consumers. These represent the projected unclaimed deposits avoided from 2025 to 2045.

CARB does not anticipate any cost or benefit to worker safety.

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the Initial Statement of Reasons (ISOR).

Benefits of the Proposed Regulation:

The objectives of the proposed regulatory action are to decrease costs to California consumers especially those in disadvantage communities, achieve slightly greater GHG emission reductions, and incentivize the reclamation of refrigerant.

A summary of these benefits is provided, please refer to "Objectives and Benefits", under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code section 11346.5, subdivision (a)(3) discussion on page four.

Business Report (Gov. Code, §§ 11346.5, subd. (a)(11); 11346.3, subd. (d)):

In accordance with Government Code sections 11346.5, subdivisions (a)(11) and 11346.3, subdivision (d), the Executive Officer finds the reporting requirements of the proposed regulatory action which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Cost Impacts on Representative Private Persons or Businesses (Gov. Code, § 11346.5, subd. (a)(9)):

In developing this regulatory proposal, CARB staff evaluated the potential economic impacts on representative private persons or businesses. Individual consumers could see increased costs for small containers if costs to small container manufacturers for reclaimed refrigerant and reporting are passed directly to consumers. The increased cost is estimated to be \$2.90 per container or a total of \$45.5 million for estimated sales of 15.7 million containers from 2025 to 2045. Some of these costs are expected to be offset by savings in the long term due to the removal of the deposit and return program.

Effect on Small Business (Cal. Code Regs., tit. 1, § 4, subds. (a) and (b)):

The Executive Officer has also determined under California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the Proposed Amendments do not have any additional direct costs or reporting requirements for small business.

Consideration of Alternatives (Gov. Code, § 11346.5, subd. (a)(13)):

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Staff analyzed two alternatives: a no action alternative with business as usual, and a container ban alternative, compared to the Proposed Amendments. Staff finds that neither are less burdensome or equally effective in achieving the purposes of the Regulation.

Alternative 1. No Change

Staff finds the Proposed Amendments are more appropriate than the no action alternative. The Proposed Amendments would require the use of reclaimed refrigerant in future small containers and reduce costs to Californians by removing the deposit and return program. The current deposit and return program achieves small emission reductions of 0.02 MMTCO_{2e} annually while disproportionately burdening Disadvantaged Communities. The emission loss due to the removal of the deposit and return program would be offset by the emission benefits of the proposed reclaimed refrigerant requirements. In addition, this alternative would continue to accrue approximately \$5.5 million in unclaimed deposits annually, of which approximately \$1.8 million are from Disadvantaged Communities.

Staff rejects this alternative. This alternative would continue to achieve emission reductions through the self-sealing valve and deposit and return program. However, the Proposed Amendments achieve 2.9 MMT CO_{2e}, more reductions of GHGs between 2025 and 2045 than Alternative 1, and Alternative 1 imposes greater costs than the Proposed Amendments, so it is not as effective in achieving the purposes of the regulation or less burdensome than

the Proposed Amendments. Also, these expected emission benefits come at a higher cost to California residents. There would be a total cost of \$59.5 million as unclaimed deposits relative to the \$45.5 million cost of the Proposed Amendments for 2025 to 2045.

Alternative 2. Container Ban

Alternative 2 is a ban on the sale of small containers of automotive refrigerant in California. This alternative would require all MVAC servicing to be done by professional technicians. This alternative was considered in the initial development of the Regulation in 2009 but was rejected due to economic impact on DIYers living in DACs. Staff revisited this alternative and estimated the emission and economic benefits.

Under the assumption that all vehicles with leaky MVAC systems are repaired by professional technicians, there will be estimated emission reductions of 7.6 MMTCO₂e cumulatively by 2045, which should be considered the upper bound of emission reductions as some DIYers may choose to forgo MVAC repair.

Under the container ban alternative, consumer costs would be affected mainly by the difference between the cost of professional repairs and the cost of DIY repairs. DIY recharges were estimated to occur at a rate of once per year at a cost of approximately \$39 or 1.3 containers, the average number of containers used by a consumer to fully charge their system. Staff estimated that professional diagnosis, repairs, and recharges cost \$650 in 2008, which, adjusting for inflation, would be \$926 in 2023. The number of vehicles affected (12 million) are calculated by taking the number of container sales estimated from 2025 to 2045 (15.7 million) and dividing by 1.3 containers per vehicle. Multiplying the cost difference (\$887) between DIY and professional repair by the number of affected vehicles (12 million) results in a total cost increase of \$10.6 billion. Consumers may choose to forego vehicle air conditioning due to the high repair cost, which could lead to health impacts from increased exposure to heat.

Staff rejects this alternative. While it would achieve emission reductions by ensuring proper MVAC repair and refrigerant recovery by technicians with higher costs to consumers.

Environmental Analysis

CARB, as the lead agency for the Proposed Amendments, has concluded that this action is exempt from CEQA, as described in CEQA Guidelines §15061, because the action is both an Action Taken by Regulatory Agencies for Protection of the Environment (as described in CEQA Guidelines §15308 for “class 8” exemptions); and it is also exempt as described in CEQA Guidelines §15061(b)(3) (“common sense” exemption) because it can be seen with certainty that there is no possibility that the proposed action may result in a significant adverse impact on the environment. A brief explanation of the basis for reaching this conclusion is included in Chapter VI of the ISOR.

Special Accommodation Request

Consistent with California Government Code section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language; and
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerks' Office at cotb@arb.ca.gov or (916) 322-5594 as soon as possible, but no later than ten business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alternativo u otro idioma; y
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al cotb@arb.ca.gov o (916) 322-5594 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

Agency Contact Persons

Inquiries concerning the substance of the proposed regulatory action may be directed to the agency representative Dongmin Luo, Manager, at (916) 277-0834 or Van Tsan, Air Resources Engineer, at (279) 842-9951, both in the Air Quality and Climate Science Section.

Availability of Documents

CARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled: Public Hearing to Consider the Proposed Amendments to the Regulation for Small Containers of Automotive Refrigerant.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on CARB's website listed below, on July 3, 2023. Please contact Chris Hopkins, Regulations Coordinator, at Chris.Hopkins@arb.ca.gov or (279) 208-7347 if you need physical copies of the documents. Pursuant to Government Code section 11346.5, subdivision (b), upon request to the aforementioned Regulations Coordinator, physical copies would be obtained from the Public Information Office, California Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed Chris Hopkins, Regulations Coordinator, (279) 208-7347. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Hearing Procedures

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may take action to approve for adoption the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also approve for adoption the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action. If this occurs, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15-days before final adoption.

The public may request a copy of the modified regulatory text from CARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814.

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on CARB's website listed below.

Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on CARB's website for this rulemaking at <https://ww2.arb.ca.gov/rulemaking/2023/smallcontainer2023>

California Air Resources Board



Steven S. Cliff, Ph.D.,
Executive Officer

Date: June 20, 2023

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 [CARB's website](http://www.arb.ca.gov) (www.arb.ca.gov).