

DRAFT

This draft proposed regulation is intended for preliminary review by the public as ARB considers multiple options. Please refer to the accompanying White Paper for a summary of the different options that ARB is considering.

DIVISION 3. AIR RESOURCES BOARD

CHAPTER 12 HALOGENATED REFRIGERANTS 13 CCR § 2510

Article 1. Refrigerants In Motor Vehicle Air Conditioning Systems

DRAFT PROPOSED REGULATION ORDER

Sales of Automotive Refrigerant in Small Containers

*Adopt sections 2510 to 2521, title 13, California Code of Regulations,
to read as follows:*

§ 2510. Applicability

Except as otherwise provided in Sections 2513 or 2514, this article applies to any person who, uses, sells, supplies, offers for sale, advertises, or manufactures for sale [recycles, reclaims, recovers, imports, exports,] or introduces into commerce in the state of California any refrigerant in small containers that is used or intended for use to charge motor vehicle air conditioning systems.

§ 2511. Definitions

- (a) The definitions in Section 1900(b), Title 13 of the California Code of Regulations apply with the following additions:
- (1) “Automatically close” means a closure occurs through the activation of a device or mechanism that causes a self-sealing valve on the refrigerant container to close, seal, and remain completely closed when not dispensing refrigerant.
 - (2) “Automotive Refrigerant” means any substance used, sold for use, or designed or intended for use as a heat transfer fluid or gas in a Motor Vehicle Air Conditioner (MVAC).

- (3) “Automotive Refrigerant [in a] Small Container” means refrigerant that is primarily used or intended for use to re-charge motor vehicle air conditioning systems by a non-professional or professional person without the use of any professional equipment that assists in charging, recovering, or recycling refrigerant from the motor vehicle air conditioning system, and is packaged in a container holding between 2 ounces and 2 pounds of refrigerant by weight.
- (4) “Can Heel” means the amount of refrigerant remaining in the automotive refrigerant small container after the container 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., an MVAC technician) is considered a ‘consumer’ for purposes of this article.
- (6) “Container Deposit and Return Program” is a program where a consumer pays a monetary deposit for a small container of automotive refrigerant at the time of purchase and the retailer returns the deposit to the consumer when the used container is returned to the retailer participating in the program.
- (7) “Dispose” means to discard refrigerant in any manner, except destruction or treatment by a method specifically approved by the US EPA for handling such refrigerant without releasing it to the atmosphere.
- (8) “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 and exports from the United States. Manufacturers, retailers, and consumers are not distributors.
- (9) “Executive Officer” means the Executive Officer of the California Air Resources Board.
- (10) “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 (usually 100 years). GWP values used in this regulation are based on IPCC Second Assessment Report.

- (11) "Label" means any written, printed, or graphic matter affixed to, applied to, attached to, embossed on, or appearing upon any automotive refrigerant 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, reclaims, or re-labels automotive refrigerant in a container which contains at least two ounces of refrigerant up to two pounds 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 Standard ("Specifications for Fluorocarbon Refrigerants", Air-conditioning & Refrigeration Institute, Arlington, VA, 2006).
- (16) "Recover" means to remove refrigerant, in any condition, from a system without necessarily testing or processing it in any way.
- (17) "Recycle" means to clean refrigerant for reuse by oil separation and single or multiple passes through moisture-absorption devices, such as replaceable core filter-driers that reduce moisture, acidity, and particulate matter.
- (18) "Responsible Party" means any individual person; trust; firm; joint stock company; Native American tribe; corporation, including a government corporation; partnership; joint venture; association; city; county; district; the state, including any department or agency thereof; or any department or agency of the United States to the extent authorized by federal law, who at the time of manufacturing owned the company.
- (19) "Retailer" means any person who owns, leases, operates or controls, or supervises a retail outlet.
- (20) "Retail Outlet" means any establishment at which automotive refrigerant in a small container is sold, supplied, or offered for sale.

- (21) "Self-Sealing Valve" means a valve on an automotive refrigerant small can that automatically seals when not dispensing refrigerant, and does not allow contents to escape.
- (22) "Topping Off" means adding refrigerant to a refrigeration or air-conditioning system in order to bring the system to a full charge.

§ 2512. Performance Standards and Test Procedures for Automotive Refrigerant Small Containers, Self-Sealing Valves and Refrigerant Dispensing Valve and Hose Assembly

- (a) Except as provided in Sections 2513 or 2514, on or after January 1, 2010, no person shall sell, supply, offer for sale, or manufacture for sale in California refrigerant in a container that contains less than 2 pounds of refrigerant unless said container has been certified for use and sale by the container manufacturer through the Air Resources Board and is covered by an Executive Order issued pursuant to this article.
- (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 Cans of Automotive Refrigerant", adopted [Board hearing date] which is incorporated by reference herein.

§ 2513. Exemptions

- (a) This Article does not apply to any refrigerant in a container less than 2 ounces or greater than 2 pounds.
- (b) This Article does not apply to automotive refrigerants with a GWP equal to or less than 150, where GWP is defined as described in Section 2511(a).

§ 2514. Sell-Through of Products

- (a) Notwithstanding the provisions of Section 2512(a), refrigerant in a container that contains less than 2 pounds of refrigerant and that was packaged or manufactured prior to January 1, 2010 may be sold, supplied, or offered for sale until December 31, 2010.
- (b) Notification for products sold during the sell-through period. A person who sells or supplies refrigerant in a container that does not fully comply with the provisions of Section 2512 must notify the purchaser of the product in writing of the date on which the sell-through period for that product 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.

§ 2515. Container Disposal or Destruction

- (a) On or after January 1, 2010, no person shall dispose of or destroy any container that contains refrigerant subject to the requirements of this Article unless the pressure in the container is at atmospheric pressure because the refrigerant has been fully introduced into a MVAC system, or unless the refrigerant has been recovered in accordance with the recovery requirements specified in section XXX of these regulations using refrigerant recover equipment at an approved recovery facility. For purposes of this Article, “destroy” is defined as any process whereby a person punctures or impairs the integrity of the container in such a way that causes any refrigerant in the container to be released into the environment.
- (b) Refrigerant recovery facilities must be certified to adequately recover automotive refrigerant from small containers.

NOTE: Details related to recovery facilities are still under development with stakeholders. It is anticipated that a technical document will describe the certification and facilities will be subject to inspection by ARB staff or designated third party. Additionally, requirements regarding technician training and certification and required equipment are still under development.

§ 2516. Container Deposit and Return Program Requirement

- (a) On or after January 1, 2010, and subject to the provisions of Section 2517, a retailer of refrigerant that is subject to the requirements of this Article must:
 - (1) collect a deposit on each container of refrigerant at the time of sale to a consumer.
 - (2) the amount of deposit on each container is initially set at \$10, and it can be increased in \$5 increments as described in Section 2517(h).
 - (3) pay the consumer at the time the containers are returned a refund in the amount of the deposit sum specified in Section 2516(a)(1) multiplied by each qualified container of refrigerant returned, provided that the consumer returns the used container of refrigerant to the retailer where purchased within, 90 days of purchase, and submits proof of purchase

(e.g., cash register receipt). A retailer does not have to pay any refund for any containers of refrigerant that have been structurally compromised so that the containers contents have been released to the environment (i.e., the container's walls have been breached).

(4) accumulate and store any used container of refrigerant and transfer said containers to the can manufacturer or its designee.

(b) On or after January 1, 2010, and subject to the provisions of Section 2517, a manufacturer designated return agency must:

(1) accept from a retailer used containers of refrigerant.

(2) pay the retailer a refund in the amount of the deposit sum specified in Section 2516(a)(1) multiplied by each qualified container of refrigerant returned. A manufacturer designated return agency does not have to pay any refund for any containers of refrigerant that have been structurally compromised so that the containers contents have been released to the environment (i.e., the container's walls have been breached).

NOTE: The definition of a “qualified container of refrigerant” is still under consideration

(c) A manufacturer may designate additional facilities to receive and store used containers from consumers, to pay consumers refunds specified in Section 2516(a) and (b) at the time the containers are returned. Such facilities may be either retail stores or entities that are not affiliated with retail stores.

(d) A manufacturer or its designee must coordinate the collection of used containers from retailers and any designated return agencies.

(e) A manufacturer or its designee must recover any refrigerant remaining in the returned cans at a centralized facility with certified recovery equipment that complies with the specifications of [SAE or ISO XXX], and in accordance with the procedures specified in [SAE or ISO XXX]. **NOTE: Additional details regarding technician training and certification and procedures are still under consideration.** Any refrigerant recovered must be reclaimed so that it meets the purity standards of [XXX] or destroys the refrigerant in accordance with the standards specified in [XXX].

§ 2517. Recycling Reporting Requirements

(a) Retailers of refrigerant subject to the requirements of this Article must, upon the request by the Executive Officer or his or her designee,

- electronically report to the Executive Officer, on an ARB approved form, the number of small containers of automotive refrigerant sold and the number of small containers of automotive refrigerant returned by consumers for each month of the 24 month period prior to October 1 of each odd numbered calendar year. The report is due by December 1 of that calendar year. The sales data and returned can data must be reported for each SKU, for each manufacturer, for each month.
- (b) Each distributor must report to the Executive Officer, on an ARB approved form, sales data of small containers of automotive refrigerant for the each month of the 24 months prior to October 1 of each odd numbered calendar year by December 1 of that calendar year. The sales data will be reported for each SKU for each retailer, for each month.
 - (c) Each manufacturer must report to the Executive Officer, on an ARB approved form, sales data of the number of small containers of automotive refrigerant and the number of small containers of automotive refrigerant returned for recycling for each month of the 24 months prior to October 1 of each odd numbered calendar year by December 1 of that calendar year. The sales data will be reported for each SKU and for each month.
 - (d) Each recycler of refrigerant must report to the Executive Officer on an ARB approved form, the number of small cans received for recycling for each month of the 24 month period prior to October 1 of each odd numbered calendar year by December 1 of that calendar year. The can data will be reported for each SKU and for each month.
 - (e) Each recycler of refrigerant from small containers of automotive refrigerant must report to the Executive Officer on an ARB approved form, the volume of reclaimed refrigerant for each month of the 24 month period prior to October 1 of each calendar year by December 1 of that calendar year. The reclaimed refrigerant volume will be reported for each SKU, for each manufacturer for each month.
 - (f) The ARB will calculate and publish the annual return rate of containers of refrigerant subject to the requirements of this Article based on reports submitted to ARB by both the manufacturers and the retailers. The return rate of containers will be calculated as the number of containers of refrigerant returned in the 24 month period ending October 1, divided by the number of containers sold during the same 24 month period.

NOTE: The procedures for calculation of return rate are still under consideration

- (g) Between January 1, 2010 and December 31, 2011, the target return rate for containers is 90%. For the period beginning January 1, 2012, the target return rate for containers is 95%.
- (h) For each reporting period (2 years) in which the return rate does not meet or exceed its target return rate, the Executive Officer or his or her designee may increase the deposit amount of section 2516(a) by additional \$5.00. 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.

NOTE: The effective date and sell-through period are still under consideration

§ 2518. Enforcement

- (a) If the Executive Officer finds any manufacturer, distributor, or retailer manufacturing for sale, advertising for sale, selling, acquiring, or offering for sale in the State of California refrigerant that does not comply with the requirements of this Article, he or she may enjoin said manufacturer, distributor, or retailer from any further manufacture, advertisement, sales, offers for sale, or distribution of noncompliant refrigerant pursuant to Section 41513 of the Health and Safety Code. The Executive Officer may also assess penalties to the extent permissible under Chapter 1.5 of Part 5, Division 26 of the Health and Safety Code commencing with Section 42400 and/or revoke any Executive Order(s) issued for the noncompliant automotive refrigeration consumer product container.
- (b) Before seeking remedial action against any manufacturer, distributor, or retailer the Executive Officer will consider any information provided by the manufacturer, distributor, or retailer.

§ 2519. Notice to Distributors, Retailers, and Sellers

- (a) On or after [effective date of this regulation], manufacturers of refrigerant subject to the requirements of this article must submit documentation that they have provided to all of their known distributors, retailers, and other interested parties true and accurate copies of the final regulation approved by the ARB and the California Office of Administrative Law.
- (b) Acceptable documentation of a mailed notification will include a hard copy of the materials mailed and the associated mailing list with complete contact information for each address submitted to the ARB Executive Officer. Complete contact information includes the retailer name,

business name, physical address, contact name, telephone number, fax number, e-mail address, and web site address.

- (c) Acceptable documentation of an e-mail notification will include a copy of the email and the complete contact information as described in subsection (b) for each email address submitted to the ARB Executive Officer.
- (d) Such information may be kept confidential upon request as specified in Sections 91000 *et seq.* of Title 17, Subchapter 4 (Disclosure of Records) of the California Code of Regulations.

§ 2520. Recordkeeping Requirements.

- (a) Manufacturers and distributors of refrigerant must retain invoices for a period not less than 5 years that show the retailer name, business name, physical address, contact name, telephone number, fax number, e-mail address, web site address, sale date, and the quantity of refrigerant purchased.
- (b) Recovery facilities must maintain records for a period not less than 5 years that show the number of small containers received, from whom they were received, and the quantity of refrigerant reclaimed.
- (c) Records must include copies of all invoices, books, correspondence, electronic data, or other pertinent documents in its possession or under its control that the manufacturer, distributor or retailer retains that is necessary to prove compliance with the requirements of this Chapter. All such records and other sources shall be provided to ARB upon request by the Executive Officer or his or her designee.
- (d) The records specified in this section may be stored in paper, electronic, or other usable formats.
- (e) The records specified in this section have to be accessible to ARB Enforcement Staff.

§ 2521. Severability

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