

**State of California
AIR RESOURCES BOARD**

EXECUTIVE ORDER H4-25-006

**Variance from Prohibitions on Use of Certain Hydrofluorocarbons in
Stationary Refrigeration, Stationary Air-Conditioning, and Other End-Use
Requirements**

**AboveAir Technologies, LLC
Other Air-conditioning Equipment**

WHEREAS, pursuant to California Health and Safety Code sections 39730, 39730.5, and 39734, the California Air Resources Board (CARB) has established prohibitions on the use of certain hydrofluorocarbons (HFCs) in stationary refrigeration, stationary air-conditioning, and other end uses, as described in California Code of Regulations, title 17, section 95371 et. seq. (HFC Regulation);

WHEREAS, pursuant to California Health and Safety Code section 39734, CARB has established a list of prohibited substances, as set forth in California Code of Regulations, title 17, sections 95371-95379;

WHEREAS, under California Code of Regulations, title 17, section 95734 subsection (c) a manufacturer may not use a substance with a global warming potential (GWP) of 750 or greater in Other Air-conditioning equipment as of January 1, 2025;

WHEREAS, California Code of Regulations, title 17, section 95378 allows an Applicant to submit a request for a variance from the requirements of sections 95374 and 95375;

WHEREAS, the Executive Officer may grant a variance if the Executive Officer determines that the Applicant has proven by clear and convincing evidence that the criteria for a variance specified in section 95378, subsection (b) has been met and that the Applicant has complied with all application requirements specified in section 95378, subsection (c);

WHEREAS, under section 95378, subsection (b)(1), the Executive Officer may grant a variance for impossibility if the Applicant cannot comply with the regulatory requirements, and the Applicant can demonstrate all of the following criteria: (1) A lower-risk substitute is not currently or potentially available; (2) An exemption will not increase the overall risk to human health or the environment; and (3) The Applicant has used best efforts to anticipate and address the impossibility and any potential noncompliance;

WHEREAS, on March 13, 2025, AboveAir Technologies, LLC. (AboveAir) applied for a variance from the requirements under section 95734 subsection (c) of the HFC Regulation for Other Air-conditioning equipment until January 1, 2027;

WHEREAS, on July 7, 2025, a delegee of the Executive Officer determined that the variance application was complete;

WHEREAS, a delegee of the Executive Officer posted the AboveAir variance application for public comment beginning July 8, 2025, and ending August 7, 2025, during which time public comment was invited, and no comments were received;

WHEREAS, AboveAir presented evidence that in 2021 AboveAir began designing computer room air conditioners (CRACs) capable of using compliant refrigerant, R-454B, instead of non-compliant refrigerants, R-410A. AboveAir has encountered technological barriers to completing the transition due to lack of availability of components compatible with compliant refrigerants and certification laboratory backlogs;

WHEREAS, a delegee of the Executive Officer affirmed that the AboveAir product families HKA, HKW/G, MCW/G, HKE/H, and MCE/H herein collectively referred to as "AboveAir Equipment" meet the definition of "Other Air-conditioning equipment" as described in section 95373 of the HFC Regulation, and are prohibited from containing refrigerants with a GWP of 750 or greater if manufactured after January 1, 2025 as described in Table 3 in section 95374(c) of the HFC Regulation;

WHEREAS, AboveAir will need to redesign the AboveAir equipment to bring them into compliance with the HFC Regulation requirements, and AboveAir presented substantial evidence that it cannot fully complete the redesign, testing, manufacturing, and certification process for HFC Regulation compliance before January 1, 2027;

WHEREAS, AboveAir stated that without a variance, AboveAir would experience extraordinary economic hardship due to the immediate cessation of deliveries in its California market;

WHEREAS, a delegee of the Executive Officer did not dispute AboveAir's assessment of the time AboveAir would need to bring the AboveAir Equipment into compliance with the HFC Regulation requirements and did not dispute AboveAir's quantification of economic losses if a variance was not granted;

WHEREAS, AboveAir proposed in its variance application to manufacture and sell AboveAir Equipment using no more than 11,998.2 pounds of R-410A refrigerant until January 1, 2027, and to reduce excess greenhouse gas (GHG) emissions that will result from the granting of this variance through the purchase of equivalent carbon emission offsets;

WHEREAS, AboveAir has demonstrated that in the absence of a variance they cannot comply with the HFC Regulation;

WHEREAS, AboveAir has demonstrated that a lower-risk substitute is not currently or potentially available due to lack of availability of components compatible with compliant refrigerants and certification laboratories backlogs;

WHEREAS, AboveAir has demonstrated that a variance for the Above Air Equipment will

not increase the overall risk to human health or the environment because Above Air will reduce excess GHG emissions that may result from the granting of this variance through the purchase of equivalent carbon emission offsets;

WHEREAS, AboveAir has demonstrated that it has used best efforts to anticipate and address the impossibility and any potential noncompliance;

NOW, THEREFORE, I, Michael FitzGibbon, based on materials submitted by AboveAir find that:

1. AboveAir cannot meet the requirements of Table 3 in section 95374(c) of the HFC Regulation for reasons beyond its control, including the lead time required to design, test, manufacture, and bring to market fully compliant products;
2. Requiring AboveAir to comply with the requirements of Table 3 in section 95374(c) of the HFC Regulation would result in extraordinary economic hardship;
3. AboveAir will mitigate its HFC Regulation noncompliance to the maximum extent feasible by agreeing to purchase a quantity of carbon offsets equal to 18,185 metric tons of carbon dioxide equivalent (MTCO₂e) for the variance period from a reputable offset provider;
4. AboveAir has submitted a compliance plan that can reasonably be implemented and will achieve compliance as expeditiously as possible, which includes compliance with the HFC Regulation requirements by January 1, 2027; and

Based on the entire record, AboveAir has proven by clear and convincing evidence that it has met the criteria for issuance of a variance for the AboveAir Equipment for 2025 through 2026 with the conditions specified below because: (a) A lower-risk substitute is not currently or potentially available; (b) An exemption will not increase the overall risk to human health or the environment; and (c) The Applicant has used best efforts to anticipate and address the impossibility and any potential noncompliance.

IT IS ORDERED AND RESOLVED that AboveAir is granted a variance until December 31, 2026 to manufacture and sell AboveAir Equipment using no more than 11,998.2 pounds R-410A refrigerant which do not otherwise comply with the HFC Regulation requirements for "Other Air-conditioning equipment" as described in California Code of Regulations, title 17, section 95734.

IT IS FURTHER ORDERED that this variance is granted subject to AboveAir's adherence with their plan to bring AboveAir Equipment into compliance by January 1, 2027. AboveAir shall maintain records substantiating their adherence with this compliance plan. Records of the compliance plan shall be made available to the Executive Officer, or their delegee, upon request.

IT IS FURTHER ORDERED that AboveAir will mitigate excess GHG emissions that may result from the granting of this variance by purchasing carbon offsets equal to 18,185 MTCO₂e. AboveAir will complete this mitigation plan by November 29, 2025. AboveAir shall maintain records substantiating adherence with this mitigation plan. Records of the mitigation plan must be made available to the Executive Officer, or their delegee, upon request.

IT IS FURTHER ORDERED that if AboveAir is unable to transition any of the AboveAir Equipment covered under this variance to HFC Regulation compliant alternatives by January 1, 2027, then such non-compliant equipment shall not be installed, used or otherwise entered into commerce in California and will be subject to all the prohibitions for "Other Air-conditioning equipment" as described in California Code of Regulations, title 17, section 95734 and requirements of section 95375.

IT IS FURTHER ORDERED that the final date for this variance from HFC Regulation compliance will be allowed for AboveAir Equipment covered by this variance is December 31, 2026.

IT IS FURTHER ORDERED that if AboveAir deviates from or fails to comply with their compliance plan or mitigation plan, they must notify CARB of the failure within 30 days.

IT IS FURTHER ORDERED that this variance is granted solely to AboveAir and is not transferable.

Executed in Sacramento, California August 29, 2025.



Michael FitzGibbon, Chief
Atmospheric Science and Climate Strategies Branch
Research Division
CALIFORNIA AIR RESOURCES BOARD